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**HIGH COURT OF HIMACHAL PRADESH, SHIMLA****N O T I F I C A T I O N**

Shimla-1, the \_\_\_\_\_, 2018  
V)/97.-

No. HHC/Rules (vol.

In exercise of the powers vested in it under Section 23 of the State of Himachal Pradesh Act, 1970, Section 129 of the Code of Civil Procedure, 1908, as amended up to date and Section 477 of The Code of Criminal Procedure, 1973, Article 225 of the Constitution of India and all other powers enabling hereunto, the High Court of Himachal Pradesh is pleased to make the following rules to apply, so far as may be practicable, to all proceedings taken on the (Appellate Side) of the High Court of Himachal Pradesh.

**RULES AND ORDERS OF THE HIGH COURT OF HIMACHAL PRADESH  
(APPELLATE SIDE)****PART-I****CHAPTER 1****GENERAL****1. Short title and commencement.-**

These rules may be called the High Court of Himachal Pradesh (Appellate Side) Rules, 2018.

2. These rules shall come into force from the date of their publication in the official gazette.

**3. Application. –**

All proceedings on the Appellate side of the Court instituted or transferred pursuant to any other law for the time being in force shall, unless otherwise ordered by the Court, be governed by these rules.

**4. Definition.-**



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

- (a) “Code” means the Code of Civil Procedure, 1908 (as amended up to date) or the Code of Criminal Procedure, 1973 (as amended up to date) as the case may be.
- (b) “Copy” means a copy of an original document prepared by the process of typing, cyclostyling, photocopying, and scanning or by computer prints.
- (c) “Court” means the High Court of Himachal Pradesh.
- (d) “Practitioner” means an advocate or an attorney or a partnership firm of practitioners.
- (e) “Registrar” means the Registrar of the High Court and includes the Registrar (vigilance), Registrar (Rules), Registrar (Judicial), Registrar (Administration), District and Sessions Judge (Leave/Training) Reserve or any other Officer exercising functions delegated to him under these Rules.

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## CHAPTER 2

### JURISDICTION OF A SINGLE JUDGE AND OF BENCHES OF THE COURT

#### 1. **Constitution of Benches:-**

Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions.

#### 2. **Cases ordinarily to be heard by Single Judge.**

Subject to the provisions hereinafter set forth the following classes of cases shall ordinarily be heard and disposed of by a judge sitting alone:-

(i) Second Appeal and any Objection therein under Order 41, Rule 22 of the Code irrespective of the value of the subject matter;

(ii) An appeal from an order under the Code including an order passed in the execution of a decree, by a court subordinate to the High Court;

Explanation. – Nothing in this rule shall prevent a Judge sitting alone to refer any appeal to a larger Bench with the approval of the Chief Justice.

(iii) An appeal relating to costs only;

(iv) An application under Section 22 or 23 of the Code for an order determining in which of several Courts having jurisdiction a suit shall be heard and an application for an order for the transfer of a case from one subordinate court to another ;

(v) An application under Order 1 Rule 8, 10 or 11 read with Section 107 of the Code;

(vi) An application for an order extending the time for, or directing any particular method of service or notice on a respondent;

(vii) An application for the withdrawal of an appeal or application or for a consent decree or order, a motion to admit an application and an

application when admitted for an order, under Order XXXII. Order XXXIX. Order XL. Or Order XLI, Rule 5 or 6 of the Code, a motion to admit an application under order XXII or Order XLI and an application under Order XLIV Rule I in a case in which the appeal is within the jurisdiction of a Judge sitting alone.

(viii) A motion to admit an application, and an application, when admitted under Section 115 of the Code, Sections 16(8) and 24(5) of the Himachal Pradesh Urban Rent Control Act, 1987, under Section 25 of the Provincial Small Cause Courts Act, 1887, or under the first proviso to sub-section (1) of Section 75 of the Provincial Insolvency Act, 1920 or under Article 227 of the Constitution of India and any other civil appeal, application, reference or review under any Act of the Central or State Legislature other than the Code if such appeal, application, reference or review is not otherwise expressly provided for ;

(ix) A reference under Order XLVI of the Code or under Section 80 or Section 81 of Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act No. 8 of 1974) as amended up to date;

(x) A proceeding of a civil nature under a special Act of the Central or State Legislature coming before the court in the exercise of its original jurisdiction e.g. under the Indian Trusts Act, 1882, the Companies Act, 1956 the Inventions and Designs Act, the Indian Divorce Act, the Indian Succession Act, the Guardians and Wards Act or the Banking Companies Act, 1949;

(xi) An appeal under Section 28 of the Hindu Marriage Act, 1955;

(xii) An appeal, petition or reference under the Code of Criminal Procedure, 1973 other than:

(a) An appeal or reference or a petition for enhancement of sentence in a case in which a sentence of death or of imprisonment for life has been passed;

- (b) An application under Section 378 of the Code of Criminal Procedure, 1973 for the grant of Special Leave to appeal from an order of acquittal in respect of offences punishable with imprisonment of 10 years or more ;
- (c) An appeal under Section 378 of the Code from an order of acquittal in respect of offences punishable with imprisonment for 10 years or more ;
- (d) A case in which notice has been issued to a convicted person who has been sentenced to imprisonment for a term of ten years or more to show cause why the sentence should not be enhanced ;
- (e) A case in which notices have been issued to a convicted person requiring him to show cause why his conviction should not be altered to one of any offence punishable only with death or imprisonment for life ;
- (f) An appeal by the accused against the conviction where the imprisonment awarded is 10 years or more;

Provided that a Judge may, if he thinks fit, refer any matter mentioned in any of the clauses of this rule or any question arising therein, to a Division Bench, with the approval of the Chief Justice.

**3. Matter to be dealt with by a single Judge during vacation & holidays.—**

- (1) The Chief Justice shall nominate any Judge of the High Court by name to be a vacation Judge, to hear matters which may require to be immediately or promptly dealt with during vacations.
- (2) The limitation will not run for the purpose of the institution of Civil and Criminal cases during the long vacation.
- (3) The Court will be open on Friday for hearing the urgent matters filed during the vacations. However, the vacation judge can take any

matter on any day on filing the mention memo showing the urgency in the matter.

(4) A single Judge specifically authorized in this behalf by the Chief Justice may during Vacation or Holiday or when Courts are not in Session, issue notice interim stay, interim injunction, bail or other interim relief in any matters which are of an emergent nature. Such jurisdiction may be exercised even in cases which are, under the Rules, cognizable by two or more Judges, unless such case is required by any other law to be heard by more than one Judge.

Chief Justice may nominate more than one judge as vacation judge for dealing with the emergent matter which by law are required to be heard by more than one judge.

4. **Jurisdiction of Division Bench:**

The following matters shall be heard by a Bench of two Judges:

(i). All appeals from orders passed under any special statute other than Code of Criminal Procedure, which provides for an appeal to the High Court from an order of penalty or for confiscation or an order in nature thereof passed under that statute shall be heard by a Division Bench hearing first appeals.

(ii). All cases to be disposed of by a Bench of two or more Judges save as provided by law or these rules.

5. **Applications for transfer of proceedings in lower Courts:—**

All applications for transfer of suits, appeals, criminal cases or other proceedings pending for trial or disposal in any Civil Court or Criminal Court subordinate to the High Court or over which the High Court has the power of superintendence, to another Court subordinate to or under the superintendence of the High Court, or to the High Court may be disposed of by a single Judge.

6. **Saving:-**

Save as provided by law or by these rules, all cases shall be heard and disposed of by a Bench of two or more Judges.

Provided that it will be open to the Chief Justice to direct by special order that any matter may be disposed of by a Bench of two or more Judges.

**7. Difference in opinion:-**

The point of difference of opinion between Judges of a Division Bench shall be decided in the manner provided for in section 98 of the Code of Civil Procedure or section 392 of the Code of Criminal Procedure as the case may be. After the third Judge to whom the reference is made has given his opinion, the matter shall be placed before the Division Bench which had originally heard the matter and it shall pronounce the final judgment or order disposing of the matter:

Provided that, where one of the Judges constituting such Division Bench has ceased to be a Judge of the High Court the Division Bench whereof originally heard the matters, the matter shall be placed before the Division Bench of which the other Judge is a member:

Provided further that where both the Judges have ceased to be the Judges of the High Court, the Division Bench whereof originally heard the matter shall be placed before a Division Bench dealing with the class of cases to which the referred matter belongs.

And the Division Bench mentioned in the proviso shall pronounce the final Judgment or order disposing of the matter.

**8. Reference to two or more Judges:—**

If it shall appear to any Judge, either on the application of a party or otherwise, that an appeal or matter can be more advantageously heard by a Bench of two or more Judges, he may report to that effect to the Chief Justice who shall make such order thereon as he shall think fit.

**9. Application for review. :-**

An application for the review of a Judgment shall be presented to the Registrar (Judicial), who shall endorse thereon the date when it is presented and lay the same as early as possible before the Judge or Judges by whom such judgment was delivered along with an office report as to limitation and sufficiency of court-fees. If such Judge or Judges or any one or more of such Judges be no longer attached to the court, the application shall be laid before the Chief Justice who shall having regard to the provisions of Rule 5 of Order XLVII of the Code nominate a Bench for the hearing of such applications:

Provided that an application for the review of a judgment of one Judge who is precluded by absence or other cause for a period of six months next after the presentation of the application from considering the decree or order to which the application refers, shall be heard or disposed of by a single Judge, and that an application for the review of a judgment of two or more Judges, any one or more of whom is or are precluded by absence or other cause for a period of six months next after the presentation of the application from considering the decree or order to which the application refers, shall be heard or disposed of by a Bench consisting of the same or a greater number of Judges.

Explanation: - For the purposes of this rule the expression 'no longer attached to the Court' shall be deemed to include absence from the permanent place of sitting on account of illness or any other cause.

**10. Subsequent application on the same subject to be heard by the same Bench:-**

No application to the same effect or with the same object as a previous application upon which a Bench has passed any order other than an order of reference to another Judge or Judges, shall, except by way of appeal, ordinarily be heard by any other Bench.

The application, when presented by or on behalf of the person by whom or on whose behalf such previous application was made, shall give

the necessary particulars of such previous application, the nature and the date of the order passed thereon and the name or names of the Judge or Judges by whom such order was passed.

**11. Application in a case entered in the cause list:-**

An application in a case appearing before a Bench in the Cause List shall ordinarily be presented before such Bench.

**FULL BENCH**

**12. Constitution of Full Bench.**

A Full Bench shall ordinarily be constituted of three Judges, but may be constituted of more than three Judges in pursuance of an order in writing by the Chief Justice.

**13. Judges of Full Bench shall be nominated by the Chief Justice**

The Chief Justice shall nominate the Judges constituting a Full Bench.

**14. The case when a Full Bench shall consist of 4 or more Judges.**

If a majority of a Full Bench of three Judges so determine, by order in writing at any time before a final decision, the Full Bench for the decision of any question or cases referred to a Full Bench of three Judges shall be constituted by four or more Judges according to such direction.

**CHAPTER 3**

**THE HEARING OF CAUSES AND OTHER MATTERS**

**1. Hours of business**

The Court will be sitting daily, except on authorized holidays, for the transaction of judicial business, between the hours of 10.00 A.M. to 4.15 P.M.

No fresh case will ordinarily be called on for hearing after 4.15 P.M., but the hearing of a part-heard case may be continued so long as the Court hearing it may deem necessary.



2. **The roster of Single and Division Benches.**

The Judges will sit singly or in Benches of two or more in accordance with a roster to be prepared from time to time. The roster will be prepared by the Registrar (Judicial) on the direction of the Chief Justice.

3. **Distribution of work to be made by the Registrar (Judicial):**

Appeals, applications, and petitions for a preliminary hearing will be distributed by the Registrar (Judicial) in accordance with the Roster. The distribution lists will not be made without his authorization and initials. A copy of the list will be supplied to the Court Masters and to the Bar Room, and the Court Masters will bring to the notice of the Judges and the Registrar (Judicial), any alterations that appear unauthorized.

4. **Hearing of ordinary and urgent petitions**

Ordinary and urgent petitions shall be set down for hearing by the Registrar (Judicial) before Single and Division Benches in accordance with the Roster for the time being prescribed under Rule 2 above.

5. **Fortnightly and daily lists of civil and criminal cases and their adjustment.**

(a) A register of civil cases complete in every respect will be maintained in the High Court. From this register, cases will be taken up in a chronological order for incorporation in a fortnightly list of cases to be heard by the Division Benches and Single Benches. For the convenience of counsel, a copy of the fortnightly list of each Bench will be sent to the Bar seven days before the beginning of the fortnight. When the work is likely to run short, the said list will be supplemented by the Registrar (Judicial).

(b) Daily list of matters posted for orders, admission, and urgent hearing will be sent to the Bar Room at 4.15 p.m. on the day preceding the date of hearing except the lists for Mondays, which will be supplied to the Bar Room at 12.00 noon on the preceding Saturdays. After the cases

in the daily lists are over, the cases in the fortnightly list will be taken up for hearing by the respective Bench.

(c) The aforesaid provisions will apply mutatis mutandis to criminal cases.

(d) Full and Special Bench cases such as Matrimonial Reference, reviews and applications for leave to appeal to the Supreme Court etc. which cannot conveniently be heard on ordinary Bench days, will be heard on such day or days as the Chief Justice may direct.

**6. Cases to be heard in the order of date of admission.**

Cases will be set down in the lists in chronological order except in the following and will be heard in that order unless directed otherwise by the court.

**EXCEPTIONS:**

(a) Postponed/part-heard cases take priority over all other cases in Division Bench and Single Bench matters in their own class.

(b) Remanded cases take priority over all others except postponed cases.

(c) Cases fixed for “actual dates”, shall be listed first in the daily lists subject to part-heard cases.

(d) Cases marked “very early” or “early” by order of a Judge or Judges shall take priority over ordinary cases.

(e) An appeal or petition against an order of remand of a lower court shall be marked “early” and shall take priority over ordinary cases.

(f) An appeal or petition in connection with which proceedings pending in the lower court are ordered to be stayed or have to be stayed in consequence of the record being sent for by the High Court for the disposal of such appeal or petition, shall be marked “early” shall take priority over ordinary cases and shall be set down for hearing within a period of three months from the date of stay or admission.

(g) Jail Petition/Appeal from the convict who is in prison shall be given priority over other matters.

**7. Adjournment of cases.**

(i) The applications, on the administrative side, for adjournment of cases, which are not actual date cases and which are not included in the list, shall be presented personally to the Registrar (Judicial), ordinarily at least three days before they are included in the list.

In exceptional cases and in unforeseen circumstances, such applications may be presented, on a day before such date, but by 11.00 a.m.

(ii) An application for adjournment of the actual date matters shall be listed before the concerned bench(s).

(iii) Ordinarily, part-heard cases will be proceeded with on the following day or days till they are concluded.

**8. Where fresh notice to be issued:-**

In the matter of elevation to the bench or appointment otherwise or death of an advocate, the Registrar (Judicial) shall issue notice(s) to the parties only if there is no other advocate on record at that time. Such notice(s) shall be issued after two months from the date of such elevation, appointment or death if no fresh advocate is engaged by the party and shall bear an endorsement, that if he/she does not make arrangement for engaging an advocate for conducting his/her case within four weeks of the receipt of the notice, he/she will be set ex parte.

**9. Fresh notice not to be issued:-**

If a party has been served with notice, there is no need for sending any other notice to him in the matter even if he remains absent without entering an appearance in the case.

**10. Notice to be served on the counsel:-**

In any matter in which the party is represented by counsel, all notices in such matter shall be served only on such counsel.

**11. Court may order a case to stand out of its place or be adjourned on application:-**

On an application made to it, the Bench may for sufficient cause shown order any case listed before it for hearing to stand out of its place in the Cause List or to be adjourned for such period as may be considered just. Where an adjournment for not more than three days is sought the application may be made orally. In considering whether there is sufficient cause for adjournment, any objection on behalf of the other party shall be taken into account.

A motion under this Rule may be made as soon as the Bench begins its work for the day and shall not ordinarily be entertained if made at any other time:

Provided that no adjournment shall be granted under this Rule unless there is sufficient work for the day.

**12. No party has right to have a case put out of its place in Cause List owing to Advocate's engagement elsewhere:-**

No party shall have the right to have a case put out of its place in the Cause List on the ground that his Advocate or his brief-holder is engaged before another Bench. The Bench may, however, order any case to stand out of its place in the list if such Advocate or brief-holder is alone in the case and is actually arguing a case before another Bench or is alone in a case that is actually being heard by another Bench and has, before the case is called on, given information in writing to the Court Master that he is so engaged before another Bench. A case will, however, not ordinarily be so put out of its place unless there is another case in the List in which the parties or their Advocates are ready and present in the court-room so that the case may be proceeded with at once.

It shall be the duty of the Advocate to inform the Court Master as soon as the case, in which he is engaged in the manner indicated above in another Bench, is over.

A case shall not ordinarily be put out of its place in the Cause List under this Rule more than once.

**13. Certain applications to be laid before Chief Justice for orders:-**

An application for the expediting of the hearing of a case or for listing a case out of turn or for the removal of a case to be tried and determined by the Court under the Rules or for the withdrawal of a case under Art. 228 of the Constitution shall be laid before the Chief Justice or any other Judge or a Bench nominated by the Chief Justice in respect of any case or class of cases for orders.

In addition to the Chief Justice, the concerned Bench including that hearing bail plea of the appellant may pass an order for expediting the hearing of the appeal.

## CHAPTER 4

### POWERS DELEGATED TO THE REGISTRAR FOR DISPOSAL OF CERTAIN JUDICIAL MATTERS

#### 1. **Functions of Registrar:-**

The following functions shall be performed by the Registrar subject to such general or special orders as may, from time to time, be passed by the Chief Justice.

- (i) to receive all appeals, petitions and other proceedings:
- (ii) to require any memorandum of appeal, petition, application, or other proceedings presented to the Court or to Registrar to be amended in accordance with the procedure or practice of the Court or to be represented after such other requisition, as the Registrar is empowered to make,
- (iii). to issue notices on an application for Probate or letters of Administration or for revocation of the same.
- (iv) to dispose of all matters relating to the service of notices or other processes, including substituted service, except the power to dispense with service on proforma respondents.
- (v) to receive and dispose of an uncontested application under Order XXII, Rules 2, 3, 4 and 10 of the Code and to amend the record, if necessary, except in cases under appeal to the Supreme Court.
- (vi) to appoint or discharge a next friend or guardian litem of a minor or person of unsound mind, except in cases under appeal to the Supreme Court, and to amend the record accordingly.
- (vii) to receive an application under Order XLV, Rule 15 of the code and to issue notice thereon.
- (viii) to receive an application for substitution of names in an appeal to the Supreme Court and to issue notice thereon.

- (ix) to receive and dispose of an application for the return of a document.
- (x) to require any person or party to file an affidavit with respect to exercise any discretion or to make any order.
- (xi) to call for a further deposit when the deposit already made by the appellant in an appeal to the Supreme Court is not sufficient to defray the cost of preparing the record.
- (xii) to order payment of the interest accruing on Government Promissory Notes deposited under Order XLV Rule 7 of the code and to order the refund of any unexpended balance under Order XLV Rule 12.
- (xiii) to specify the newspapers in which the publication referred to in Order XLV, Rule 9-A of the Code shall be made.
- (xiv) to grant time for making up the deficiency in court-fees in cases referred to him as Taxing Officer under Section 5 of the Court-fees Act, 1870. No application for extension of the time will be refused without the orders of the court.
- (xv) to condone the delay in removing the objections raised by the office to papers presented in the Registry up to a period of four months in the aggregate. If the aggregate delay exceeds four months, application for condonation must be placed before a Judge of the Court.
- (xvi) to order for proceeding ex parte against a respondent who has failed to appear before the Registrar despite due service of the notice.
- (xvii) to sign complaints under clause (a) of subsection (3) of Section 340 of Criminal Procedure Code. Provided the Registrar may refer any matter under Rule 1(i) to (xiii) to the Court for orders.
- (xviii) to receive application and memorandum presented by an indigent person.

(xix) to extend the time originally fixed for furnishing security or to grant further time when a default has been made in furnishing security within the time originally fixed, on an application made to him.

Provided that the Registrar may in his discretion refer any proceeding before him for the decision of the Court

**2. Revision against the orders of the Registrar:-**

The Registrar shall be deemed to be performing judicial or quasi-judicial functions within the meaning of section 128(2) (i) of the Code when exercising powers referred to in Rule 1 above and his proceedings will be subject to revision by a Single Judge on the motion of the party aggrieved.

**3. Power to make corrections:-**

The Registrar may exercise all the powers of a Court under Section 152 of the Code in respect of orders passed in exercise of powers under Rule 1.



## CHAPTER 5

### INSTITUTION OF PROCEEDINGS

#### A. PRESENTATION OF APPEALS, PETITIONS, CIVIL WRIT PETITIONS ETC.

##### 1. Manner of presentation:

All appeals, civil writ petitions, petitions and applications for review and revision and other petitions etc. affidavit or other documents and all other proceedings connected with the judicial work of the Court sought to be presented, shall be so presented by litigants or their Advocates or registered Clerks of the Advocate at the filing counter between 10 a.m. to 1 p.m. and 2 p.m. to 4 p.m. on every day, other than a Court holiday, accompanied by the form prescribed in Annexure A in duplicate, duly filled in with all the necessary particulars. On such presentation, the Court official at the filing counter, shall verify the papers presented and return the duplicate of the form prescribed in Annexure A duly signed by him with the seal of the Court to the litigants or the Advocates or the registered Clerks of the Advocates, as the case may be, in token of presentation of such proceedings in the Court;

Unless the Court otherwise orders, no document required to be presented to or filed in Court which is sent by post or by telegram shall be received or filed into Court.

Provided that appeals, applications for review or revision and petitions etc. or any other documents of the prisoners or detenues received through the officer in charge of the Prison shall be entertained by the Court.

Whenever the facilities for e filing have been created, it shall be permissible to e-file the petitions by uploading them on the server of the High Court as per the procedure notified by the High Court.

All appeals, applications for review or revisions and petitions etc. accompanied by petition to be treated as urgent as well as transfer High Court of Himachal Pradesh Appellate Side Rules, 2018

application petition for issue of writ which are to be treated as urgent may be super-scribed as urgent and may be so presented by the litigants or their Advocates or registered Clerks of the Advocates at the filing counter on any working day during filing hours. Civil writs and transfer applications in civil cases are not, however, treated as urgent during the period the High Court is closed for long vacation unless accompanied by a petition to be treated as urgent.

**2. Two additional sets of papers to be filed by the practitioner for the use of the Bench of Two Judges:-**

In every appeal, petition or other proceeding which under the rules of the Court have to be posted before a Bench of two Judges, the practitioner shall, at the time of filing the appeal or petition, furnish two additional sets of papers duly paged, indexed and stitched in book form for the use of the Bench.

**ORIGINAL**

**Annexure-A**

**HIGH COURT OF HIMACHAL PRADESH SHIMLA APPELLATE  
SIDE**

Receipt Showing Court Fee paid.

LPA/RFA

RSA/MSA

FAO/C.R.

CMP/Review of \_\_\_\_\_ against

on the file of the

Cr. A. /Revision

CWP/Cr.W.P.

Cont. App. /Coy. Appeals

CMP (M)

High Court of Himachal Pradesh Appellate Side Rules, 2018

Particulars	Amount
Court fee Stamp on Memo	
-do- Petition	
-do- Enclosures	
-do- Vakalatnama	
-do Process fee	
-do- Others	_____
Total	
_____	

Date: \_\_\_\_\_ Signature of receiving Clerk

Note: - Fill up the complete particulars of the proceedings before the authorities below

\_\_\_\_\_

**DUPLICATE**

**Annexure-A**

**HIGH COURT OF HIMACHAL PRADESH SHIMLA APPELLATE  
SIDE**

Receipt Showing Courts Fee paid.

LPA/RFA

RSA/MSA

FAO/C.R.

CMP/Review of \_\_\_\_\_ against

on the file of the

Cr. A. /Revision

CWP/Cr.W.P.

High Court of Himachal Pradesh Appellate Side Rules, 2018

Cont. App. /Coy. Appeals

CMP (M)

Particulars

Amount

Court fee Stamp on Memo

-do- Petition

-do- Enclosures

-do- Vakalatnama

-do Process fee

-do- Others \_\_\_\_\_

Total

Date: \_\_\_\_\_ Signature of Receiving Clerk

Note: - Fill up the complete particulars of the proceedings before the authorities below:-

**B. PRESENTATION OF CRIMINAL APPEALS, CRIMINAL WRIT PETITIONS, AND REVISIONS ETC.**

**1. Manner of presentation:**

All Criminal Writ Petitions, Criminal Appeals and Revisions under Section 401 of the Code of Criminal Procedure and all other petitions connected with the judicial work of the Court shall be presented by litigants or their Advocates or the registered Clerks of the Advocates at the filing counter between 10 a.m. to 1 p.m. and 2 p.m. to 4 p.m. on every day, other than a Court holiday, accompanied by the form prescribed in Annexure-A in duplicate, duly filled in with all the necessary particulars. On such presentation, the Court official at the

filing counter shall verify the papers presented and return the duplicate of the form prescribed in Annexure-A duly signed by him with the seal of the Court to the litigants or the Advocates or the registered Clerks of the Advocates, as the case may be, in token of presentation of such proceedings in the Court.

**2. Filing of urgent petitions:-**

All Criminal Writs, Criminal Appeals, Revision Petitions and Applications etc. accompanied by a petition to treat the same as urgent shall be superscribed as such and shall be so presented by the litigants or their Advocates or the registered Clerks of the Advocates at the filing counter on any working day during the filing hours.

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**B. "APPEALS"**

**1. Form of appeal:**

(i) Every memorandum of appeal against original order/decrees of Subordinate Courts, Appellate decrees and orders, orders/awards under the Code or Central/State Legislations shall be in English. As many clear, legible and true copies on plain paper of the memorandum of appeal as there are respondents to be served in the appeal shall be filed along with the Process-fee when the notice is ordered to be issued or the appeal is admitted.

(ii) If an appeal is against an interlocutory order, it shall be accompanied by a certified copy of the order against which the appeal is filed.

(iii) When any of the accompanying document is in vernacular, it must be accompanied by an English translation thereof."

**2. Appeal by indigent persons:-**

No application for leave to appeal as indigent personal shall be received unless it is accompanied by a memorandum of appeal nor shall

a memorandum of appeal purporting to be on behalf of indigent person be received unless it is accompanied by an application for leave to appeal as an indigent person. A schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof shall be annexed thereto. The Schedule shall also be signed and verified in the manner prescribed for the signing and verification of pleadings.

**3. Presentation:-**

(a) Such application and memorandum shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, under Section 132 or 133 of the Code or any other provision of law. In the latter case, the application and memorandum can be presented by an authorized agent who can answer all material questions relating to the application. Such agent may be examined in the same manner as the party represented by him might have been examined, had such party attended in person.

(b) Every such application, if presented by an agent shall state on the face thereof that the applicant is a person exempted from appearance under section 132 or Section 133 of the Code or any other provision of law and shall not be received unless it contains such a statement.

**4. Return of the application or memorandum:-**

When an application or memorandum of appeal is one that cannot be received, the foregoing directions, the Registrar (Judicial) shall record, or cause to be recorded thereon the name of the person presenting such application or memorandum the date of its presentation and an order returning the same for due presentation with the reason for such order and shall sign and date such order with his own hand.

**C. "CIVIL REVISIONS"**

**1. Contents of Civil Revisions:-**

Every Civil Revision petition shall be in English and stamped as required by law, and shall be accompanied by a copy of the decree or High Court of Himachal Pradesh Appellate Side Rules, 2018

order in respect of which such application is made and by a copy of the judgment upon which such decree is founded.

In the case of petitions for revision of the decree or order of an appellate Court, a copy of the judgment or order of the Court of the first instance shall also be filed.

**2. Annexure to the Civil Revision:-**

Civil Revision petitions under Section 115 of the Code or any other enactment shall be accompanied by:

- (1) a certified copy of the decree or order which is to be revised;
- (2) a certified copy of the judgment, if any, on which decree is based;
- (3) a true copy of the judgment or order if any, of the Court or Tribunal of the first instance;
- (4) one set of additional copy of the judgments and orders referred to above;
- (5) as many clear authenticated copies in the plain paper of the memorandum of grounds on the revision petition as there are respondents to be served, together with another such copy for the court record ;
- (6) the particulars for service of notice on the respondents along with fees prescribed for service of such notices on the respondents.

**3. Annexures in case of Revision against interlocutory orders:-**

If the Civil Revision petition is against any interlocutory order, it shall be accompanied by a certified copy of the order which is to be revised, true copies of the pleadings of the parties in the main matter, true copies of the applications and replies thereto whereon the order sought to be revised was passed and a copy of any other material document(s) relied to support the grounds taken in the petition.

However, when any of the accompanying documents is in vernacular, the Court may direct filing of English translation thereof.

**4. Civil Revisions and Appeals from Appellate Orders:-**

Subject to these Rules, the procedure prescribed in Order XLI of the Code with respect to appeals shall, so far as may be, also apply to revisions and appeals from appellate orders where such appeals are allowed under any law.

**F. "CRIMINAL REVISIONS"**

**1. Order of District Magistrate to accompany a criminal revision against the order of acquittal:-**

The Registrar (Judicial) shall not receive any petition for revision of an order of acquittal passed in a case instituted on the police report, unless it is accompanied by a copy of an order of the District Magistrate, refusing to move the State Government to appeal under Section 378 of the Code.

Note. - The complainant has a right of appeal from an order of acquittal passed in a case instituted upon complaint, where the High Court has granted him special leave to appeal on the application made under Section 378 (4) of the Code.

**2. Affidavit to accompany Criminal Revision:-**

A petition under Sections 397 and 401 of the Code of Criminal Procedure for the revision of orders of any criminal Court inferior to the Court of Sessions in non-appealable cases shall not be entertained by the Registrar (Judicial) unless the same contains an averment supported by an affidavit of the petitioner that he has not filed any such petition before the Sessions Judge. The petitioner shall also state whether to his knowledge similar application has or has not been made by any other person to the Sessions Judge and if made shall state the result thereof.

**3. Order to accompany Revision:-**



- (i) Every petition for revision of an order shall be accompanied by a copy of the order in respect of which such application is made.
- (ii) In the case of a petition for revision of the order of an appellate Court, a copy of the order of the Court of the first instance shall also be filed.

### **G. “APPLICATION FOR REVIEW”**

#### **1. Petition to be signed:-**

Every application for review of a judgment or order of a Division Bench or of a Single Bench of the High Court presented by an Advocate shall be signed by him.

#### **2. Copy of judgment to be filed with the review:-**

It shall be accompanied by a certified copy of the judgment sought to be reviewed.

#### **3. Contents of review application:-**

An application for review on the ground of the discovery of new and important matter or evidence shall state in clear terms what such new or important matter or evidences, the effect or purpose thereof, how the same after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order made and how and when he came to know of it or became able to produce it and the affidavit accompanying it shall be made by the applicant himself.

#### **4. Service of notice:-**

Where, in a petition for review, notice is ordered to the opposite party, such notice shall be served on the practitioner who represented the party in the main proceeding and such service shall be deemed to be sufficient service on the party whom he represented. A practitioner may refuse, in writing, to accept such notice. The petitioner shall then be required to take out a notice to the party direct. The practitioner who had

refused to accept notice shall not be permitted to appear for the party thereafter except on filing a fresh vakalatnama. In cases where the opposite party has not appeared by a practitioner in the main proceeding, notice shall be served on the party direct.

#### **H. “MISCELLANEOUS”**

##### **1. Certain particulars to be mentioned:-**

The Memorandum of Appeal/Revision/Review must contain the number of the case and date of a decision against which such appeal or revision is being preferred. In case of the Second Appeal, the number(s) of the Case and date(s) of decisions of both the lower Courts shall be mentioned. In case the appellant-petitioner fails to give these particulars, the appeal/revision shall be held “under objection”.

##### **2. Appeals, references and miscellaneous applications to be registered and numbered:-**

(i) Appeals, references and all applications, except those expressly exempted, shall be separately registered and numbered immediately after they have been received.

(ii) Every defective appeal or application required to be registered and numbered under sub-rule (1) shall be entered in a register of defective cases. After the defect has been removed it shall be entered in the appropriate register of the regular case and numbered.

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## CHAPTER 6

### A. PETITIONS/MEMO OF APPEALS

#### 1. **General heading of application and memorandum of appeal or objection:-**

(1) Every memorandum of appeal or objection and every application other than an application made in any case pending in the Court shall bear the general heading:

"In the High Court of Himachal Pradesh at Shimla" and shall have written on it immediately below such heading the following, namely--

(a) In the case of a memorandum of appeal or objection, or application for review or revision.

The description such as, 'First Appeal'; 'Execution First Appeal', 'First Appeal From Order', 'Execution Second Appeal', 'Second Appeal From Order' 'Special Appeal' 'Civil Revision' or 'Application for Review, ' as the case may be, followed by a reference to the section and the Act or the Rule under which it is filed and below it the words 'no. of (year)'

(b) in the case of other

The words 'Civil Miscellaneous Case no. of (year)' followed by a reference to the section and the Act or the Rule The words 'Civil Miscellaneous Case no. of (year)' followed by a reference to the section and the Act or the Rule under which it is filed

Every application made in a pending case shall state the section and the Act or the Rule under which it is made. It shall bear the general heading:

"In the High Court of Himachal Pradesh at Shimla" and shall have written on it immediately below such heading the following, namely--

Civil Miscellaneous Application..... (No. and year of the application).

Under..... (State law) .....

In..... (Nature, number and year of the pending case).....

(Name of the applicant).....

Versus

(Name of the parties of the pending case)]

(3) Every memorandum of appeal or objection and every application shall be in the language of the Court.

## 2. **Full description of parties:-**

Every person presenting an application, appeal or revision or arrayed as an opposite party therein shall be described with such particulars as will ensure his clear identification, such as his full name, the name of his father, his religious persuasion, his rank or degree in life, his profession, calling, occupation or trade and his true place of residence.

Every memorandum of appeal or objection or application shall set out concisely in a numbered paragraph the facts upon which the applicant relies and the grounds upon which the Court is asked to grant the relief asked for and shall conclude with a prayer stating clearly, so far as circumstance permit, the exact nature of the relief sought.

## 3. **Water-marked paper to be used:-**

Every memorandum of appeal or objection or application shall be fairly and legibly written or typewritten, lithographed or printed with quarter margin on one side only of watermarked paper:

Provided that the Court may when considered necessary, permit any other paper of foolscap size or both sides of the paper to be used for the purpose.

## 4. **Particulars of non-contesting party to be mentioned:-**

The appellant or the applicant, as the case may be, shall append a note duly signed by the appellant, applicant or the advocate engaged in High Court of Himachal Pradesh Appellate Side Rules, 2018

that behalf, at the bottom of the memorandum of appeal or application stating clearly the name, parentage and address of the person arrayed as a party in the appeal or application, who did not file a written statement or objection in the trial court/court below, or who, having filed the written statement or objection, did not thereafter contest the case, or who was being arrayed only as proforma respondent or opposite party.

5. **Provision of law to be mentioned:-**

Every memorandum of appeal or application shall specify the provision of law under which the appeal or application is filed. The Registrar shall refuse to receive any memorandum of appeal or application which does not comply with this rule.

6. **Valuation to be entered in memorandum of appeal etc.:-**

Every memorandum of appeal or objection and every application for review shall contain a statement of the value of the appeal or objection for purposes of the Court-fee and jurisdiction. In the case of a revision petition value of the suit or another proceeding from which it arises should be stated.

7. **Court fee to be filed:-**

No petition, memorandum of appeal or another document which ought to bear a stamp under the Court Fees Act, 1870, shall be received in the Court until it is properly stamped.

8. **Memorandum of Appeal or petition in forma-pauperis -**

Every memorandum of appeal or petition presented in forma-pauperis together with the application under Order XLIV, Rule 1 (1) of the Code shall be posted before the Court.

Where notice is ordered to Government proof of service of such notice on the Government Pleader shall be filed within three days from the date of the order directing issue of notice.

Where notice is ordered to the respondents, the appellant or the petitioner shall, within three days of such order, file into Court the particulars for service of notices on the respondents in the Form No. 1 appended to this Rule, the notices in Form No. 2 appended to this rule in duplicate for service on each respondent, the fees prescribed for service of such notices, and the requisite number of authenticated copies of the affidavit in support of the petition.

The petition shall be posted for hearing before the Court not less than fourteen days after the service of such notice on the respondent.

Within seven days of the date of the order of the Court granting leave to appeal in forma pauperis against an original decree of a subordinate court, the appellant shall bring into Court the particulars for service of notice of appeal on the respondents in Form No. 1 appended to the rule, the fees prescribed for service of such notices and the requisite number of authenticated copies of the memorandum of the grounds of appeal.

Form of memorandum giving particulars for service on the respondent

### **FORM NO. 1**

Court Fee stamp affixed for Rs.

Appeal No.....of 20

Name	Father's name or if minor name of guardian	Occupation If any	Address for service Dist. Taluk Village and the name of nearest post office (if a town, street and door

			number)

### Form of Notice

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Civil Miscellaneous Petition No:.....of 20.....

In

No:.....of 20

Petitioner

Respondent

To,

.....Respondent

Whereas the petitioner above named has presented the above petition, praying that in the circumstances stated in the affidavit filed in support thereof a copy of which is annexed hereto, the High Court will be pleased to.....and whereas the petition will come on for hearing on the day of .....20.....or as soon thereafter as the Court may direct, you are hereby required to appear, in person or by advocate, to show cause why the petitioner's prayer should not be granted, in default of which the matter will be heard and decided in your absence.

(By Order of the Court)

Shimla.

Dated.....20.....Registrar, (Judicial)

The hours of attendance at the office of the Registrar in the High Court Buildings are from 11 a.m. to 4 p.m. except on Sundays and other holidays.

**9. Contents of memorandum of appeal or application for review or revision:-**

(1) Every memorandum of appeal or application shall be accompanied by date/event wise synopsis of the case and shall further state-

- (a) the name and address of each of appellant or applicant and whether he was plaintiff or defendant or applicant or opposite party in the Court of the first instance;
- (b) the name and address of each person whom it is proposed to join as a respondent or opposite party and whether he was plaintiff or defendant or applicant or opposite party in the Court of the first instance;
- (c) The name of the Court by which, and the name of the presiding officer by whom, the decree or order objected to was made;
- (d) the number including CNR and the description of the case;
- (e) the date when decree or order was made;
- (f) the grounds, numbered consecutively, of objection to such decree or order;
- (g) the precise relief sought;
- (h) the value of the suit and appeal separately for purposes of (1) jurisdiction, and (2) Court-fees; and
- (i) The memorandum shall be signed by the appellant or the applicant as the case may be, or on his behalf, by an advocate on the roll of the Court.



Where the particulars indicated above are not available at the time of filing of the appeal, they may be supplied as soon as available but before the hearing of the appeal by the Bench.

(j) In case of appeal arising from any order, decree or award, the details of appeal if any, filed earlier by any party to the order, decree or award shall also be mentioned.

**10. Documents to accompany memorandum of appeal or revision application:-**

Every memorandum of appeal or application for revision shall be accompanied by-

- (a) a copy of the decree or formal order against which the appeal or application is directed;
- (b) a copy of the judgment upon which such decree or formal order is founded;
- (c) a copy of the judgment of the Court of the first instance where the appeal or application is directed against an appellate or a revisional decree or order;
- (d) in the case of an appeal under Section 6-A, Court Fees Act, one extra copy of each of the plaint, the order appealed against and the memorandum of appeal; and where the appeal is against an order directing payment of Court- fee on a written statement, one copy also of the written statement. Such copies shall be certified to be true either by the appellant or his counsel or recognized agent;
- (e) in the case of a memorandum of appeal which is filed after the expiry of the period of limitation, an application supported by an affidavit for extension of the period of limitation under Section 5 of the Limitation Act, 1963;
- (f) in the case of an appeal from an order under Rule 1 of Order XLIII of the Code or revision from an interlocutory order, copies of all other

papers upon which the appellant or the applicant, as the case may be, relies;

(g) in the case of the first appeal from an order, where such an appeal is to be heard by a Bench of two Judges, an extra copy of the order appealed against duly certified to be correct by the appellant or his counsel, as the case may be:

Provided that the Judge may, for sufficient cause shown, dispense with a copy of the formal order under clause (a) or a copy of the judgment under clause (b) or (c) or any paper under clause (f) or an extra copy of the order under clause (g).

No copy of any paper under clause (f) shall, however, be dispensed with unless the Court thinks that such copy is not required for the consideration of the motion for admission of the appeal or revision, as the case may be :

Provided secondly that the Court may for sufficient reasons, accept memorandum of appeal without a copy of the decree appealed from, if the counsel for the appellant certifies that the copy has been applied for, within the period of limitation and has not been issued, subject to the copy being filed, subsequently within the time granted by the Court:

Provided thirdly that where a copy of the Judgment of the Court of the first instance referred to in clause (c) or any copy or copies of the papers referred to in clause (f) cannot be filed along with the memorandum of appeal or application for revision as the case may be, the Court may, on the presentation of an application accompanied by an affidavit, for sufficient cause shown, allow such further time for the filing thereof, as it may think fit:

Provided fourthly that where the affidavit is not filed with the application referred to in clause (e), it may be filed within three months of the date of the filing of the appeal.

**11. Certain grounds in memorandum of appeal to be certified:-**

If one of the grounds of appeal be that there is no evidence or admission on the record to support the decree, the fact shall be mentioned in the memorandum which there is no evidence or admission on the record.

Such ground shall not be allowed to be urged unless the Advocate for the appellant has certified under his hand before the hearing of the appeal that he has examined the record and that the ground is well founded.

**12. Memorandum of appeal or objection or application to be accompanied by copies thereof:-**

(1) Every memorandum of appeal or objection and every application shall be accompanied by as many typed copies thereof as there may be parties to be served, together with -

(i) two extra copies in a Division Bench case, to be supplied at once, and

(ii) one extra copy in every other case:

Provided that it shall not be necessary to supply copies for service on the parties until the Court has ordered notice to issue.

It shall be deemed to be sufficient compliance with this Rule if the person presenting the memorandum of the application gives a written undertaking to supply the necessary copies within four days of its admission. Such copies shall be certified to be correct by the party supplying them or his Advocate:

Provided further that in every Division Bench case an extra copy of all the documents (including judgments or orders appealed against) duly certified to be correct by the appellant or his counsel, as the case may be, shall also be filed for the use of the Court along with the memorandum of appeal, objection or application. It shall not, however, be necessary to supply an extra copy of the decree or formal order.

(2) If the requisite copies are not supplied within such time or within such further time as may, for sufficient cause shown, be allowed by the Registrar, the memorandum or application shall be listed for rejection before the Court.

(3) No order shall issue from the Court on such memorandum or application until the required copies have been supplied.

(4) The copies shall be fairly and legibly written or typewritten, lithographed or printed with quarter margin on one side of the durable paper:

Provided that the Court may when considered necessary, permit any other paper of foolscap size or both sides of the paper to be used for the purpose.

**13. Petition for transfer:-**

Where a petition or application for the transfer of a criminal case from one Criminal Court to another Criminal Court in the same Sessions Division is made to the High Court, it shall contain an averment, supported by an affidavit or attested copies, that an application for the transfer of the case was made to the Sessions Judge and was rejected by him under Section 407 (2) of the Code of Criminal Procedure.

**14. Contents of petition for transfer:-**

Petitions for transfer in a pending criminal case shall be refused by the Registrar (Judicial) unless accompanied by attested copies of the documents relied on by the petitioners. If admitted, the records should not be sent for unless a Judge specifically so orders.

**15. Supply of copy of transfer to Advocate General:-**

A copy of such petition for transfer shall be supplied to the Advocate General before it is filed in Court. The petition shall state whether a copy has been supplied in accordance with this rule and if a

copy has not been supplied, the reasons for not supplying the same shall also be stated.

**16. Notice of urgent petition:-**

Notice of the hearing of urgent petitions shall not be given individually to the Petitioner or his counsel but a list of such petitions shall be hung up for the purpose on the notice board outside the Registrar's room as well on the website of the High Court on the day preceding the date fixed for the hearing of these petitions given the name of the Judge by whom the petition will be heard.

**17. Revision against orders passed in summary jurisdiction:-**

In petitions under Section 397, Criminal Procedure Code, against the order of a Magistrate, in cases tried summarily and in which there are no records except entries in the Register of Summary Trials (Criminal Register No. XVII), certified copies of the relevant entries in the Register shall be called for instead of records.

**B. APPLICATION UNDER SECTION 5 OF THE LIMITATION ACT.**

**1. Contents of petition:-**

An application under Section 5 of the Limitation Act which a party may file for condonation of delay in filing an appeal, petition or application shall contain:-

- (i) the date when the prescribed period expired without allowances to be paid to the applicant, the allowances to which the applicant claims to be entitled ;
- (ii) the date when the period expired after all the allowances to be made under clause (ii) have been made ;
- (iii) the number of days by which the filing of the appeal, petition or application, as the case may be, is delayed after all allowances to be made under clause (ii) have been made.

## 2. **Affidavit to accompany the application:-**

Every memorandum of appeal or petition which is presented after the expiration of the time limited by law shall be accompanied by an affidavit explaining the delay. If any such memorandum of appeal or petition is presented without such affidavit, therewith, be returned to the applicant, it shall, together with all papers presented therewith, be returned to the pleader or party presenting them with an endorsement as follows:

“ This memorandum of appeal (or petition) has been presented ...days out of time. The pleader (or Party) is requested to explain the cause of the delay in order that the case may be posted before the court for consideration of such explanation, and for orders thereon”.

## 3. **Petition to be posted for hearing:-**

Every memorandum of appeal or petition re-presented with such explanation shall be posted for orders before a Single Judge or a Bench of two Judges, as the case may be, and the Court may direct notice to the respondent of the presentation of the appeal and of the grounds on which the appellant contends, that such presentation is within the period of limitation prescribed and the appellant shall within three days of such order bring into Court the process-fee required for the service of such notice on the respondent.

### **C. INTERLOCUTORY APPLICATIONS AND MATTERS**

#### **1. Amendment:-**

An application for leave to amend a memorandum of appeal or of objections or a petition of revision shall be made by petition upon notice to any party, who has entered an appearance and shall set out the amendment prayed, if leave is granted the Court may allow further time for the preparation of the record, and unless the court otherwise directs the order shall be conditional upon payment by the appellant of the costs

of the application and of any further translation and printing of the record.

**2. Notice of findings to be given:-**

When an issue is referred for trial to the lower court and the finding of the lower court is returned, notice shall be given on the notice board of the Court, and any party desirous of objecting to the finding shall, unless otherwise ordered, within seven days after such notice, file in Court a memorandum of his objections and serve a copy thereof on the other party.

**3. Contents of petition:-**

An application with respect to any of the matters mentioned in these rules shall be made by a petition to the Court stating the provision of law under which relief is sought, and the order prayed and any evidence thereon shall be given by affidavit.

The petition shall be presented to the Registrar (Judicial) or such officer as he shall appoint.

**4. Affidavit to accompany certain application:-**

(1) The following application shall set out the prayer stating clearly the exact nature of the relief sought and shall be supported by an affidavit setting out in the form of a narrative the material facts and circumstances, including names and dates, where necessary on which the applicant relies-

- (i) an application for review made on the ground of the discovery of new and important matter or evidence or any other sufficient reason;
- (ii) an application for stay of execution or proceedings;
- (iii) an application for the vacating of an order for stay;
- (iv) an application for security, including an application under Rule 6 or 10, of Order XLI of the Code;

- (v) an application for attachment before judgment or injunction or any other application under Order XXXVII or XXXIX of the Code;
- (vi) an application for the appointment or discharge of a receiver;
- (vii) an application for the re-admission or restoration of an appeal or application dismissed for default of appearance or for want of prosecution or for the setting aside of an ex parte decree;
- (viii). an application for substitution of parties including an application under Rule 3 (1) or 4 (1) of Order XXII of the Code or for a note to be made on the record that the legal representative of a deceased party is already on the record or that a party has died without leaving any legal representative;
- (ix) an application for the appointment, or removal of a guardian ad litem or next friend;
- (x) an application under Rules 12, 13, 14 or 15 of Order XXXII of the Code;
- (xi) an application for transfer of case including application under Section 22 of the Code:

Provided that it shall be obligatory to annex to the application for transfer of a case a copy of the order passed by the District Judge if any;
- (xii) an application praying that a person be punished for contempt of court;
- (xiii) an application by way of complaint against a legal practitioner;
- (xiv) an application under Section 5 of the Limitation Act, 1963;
- (xv) an application for the setting aside of an abatement;
- (xvi) any application which is required by these Rules or by any other law to be supported by an affidavit; and



(xvii) any other application in support of which the Court may require an affidavit to be filed.

(2) The Court or the Registrar may call for an affidavit in any other matter coming up before it or him.

5. **Affidavit in reply:-**

Any person opposing the grant of an application or showing cause against a rule may bring before the Court any facts not contained in the application of the other party, by an affidavit, containing in the form of a narrative, the material facts on which he relies.

6. **Contents of application for a stay: -**

An application for stay of execution of, or proceedings under, a decree or order shall contain such of the following particulars as may be material to such application, namely-

- (a) the date of the decree or order;
- (b) the particulars and nature of the suit to which the proceedings relate and the Court to which the stay order is to be communicated;
- (c) the date of the order for sale, if any;
- (d) the date fixed for sale if any;
- (e) the grounds upon which stay is sought; and
- (f) where the stay is sought under Rule 5 (1) or Order XLI of the Code, the facts necessary to satisfy the Court as to the matters mentioned in sub-rule (3) of that Rule.

7. **Contents of application for re-admission or the setting aside of an ex parte decree:-**

(1) An application for the re-admission of an appeal or application dismissed for default of appearance shall state the circumstances in which such default was made, and whether or not the party concerned

had previous to such dismissal engaged an Advocate to conduct such appeal or application.

Where an advocate had been so engaged, the application shall further state the name of such Advocate, the date when he was engaged, the amount of fee agreed to be paid and whether the full fee had been paid to him before the date of such dismissal. And the affidavit in support of these facts shall, if possible, be based on the personal knowledge of the deponent and not merely on his information and belief.

(2) The provisions contained in sub-rule (1) shall with necessary adaptations and modifications apply to an application for the setting aside of an ex parte decree or order.

**8. Contents of application for substitution:-**

(1) An application to bring on record the legal representatives of a deceased party shall state the precise date of the death of the party concerned.

**9. Contents of application for appointment of guardian or next friend:-**

(1) An application for the appointment of a guardian ad litem or next friend of a minor shall state -

(a) whether or not the minor has a guardian appointed under the Guardian and Wards Act, 1890, and if so, his name and address;

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

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

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

(e) that the person sought to be appointed guardian or next friend has no interest in the matters in controversy in the case

adverse to that of the minor and that he is a fit person to be so appointed;

(f) whether the minor is less than ten years of age.

(2) The provisions contained in sub-rule (1) shall apply mutatis mutandis to an affidavit accompanying an application for appointment of a guardian ad litem or next friend of a person of unsound mind.

**10. Prayer for an order of interlocutory nature:-**

A prayer for stay of execution or proceedings or for the vacating of an order staying execution or proceedings or for admitting additional evidence or for any other order of an interlocutory nature shall not be contained in the memorandum of appeal or the application for revision to which it relates but shall be made by a separate application.

**11. Defective application or memorandum of appeal or objection may not be received:-**

(1) No application or memorandum of appeal or objection shall be received if it is not in the proper form or is not accompanied by the necessary documents:

Provided that the Judge or the Registrar (Judicial), as the case may be, before whom such application or memorandum is presented, may receive it and for sufficient cause shown, grant such time as he may consider proper for supplying such documents or removing such defects, and

Provided further that nothing done under the first proviso shall have the effect of extending the period of limitation in the case of a memorandum of appeal where the copy of the judgment or decree or formal order is not filed within the prescribed time.

(2) The required documents are not supplied or the defects are not removed within the time allowed by the Judge or the Registrar (Judicial),

as the case may be, the application or memorandum of appeal shall be listed for rejection before the Court.

**12. Certain copies not to be returned:-**

No copy of a judgment, decree or formal order accompanying a memorandum of appeal or an application for revision, shall be returned unless such memorandum or application itself is ordered to be returned.

**13. Service of Notice:-**

(I). If notice of the application is to be given, the applicant shall serve the notice with a copy upon the other party to the appeal and shall take the signature of the party or his pleader upon the notice in acknowledgment of service, and where service is on the party shall file an affidavit in proof of service. The notice may also be served by way of the courier, registered post acknowledgment due, e-mail, fax or any other mode as may be approved by the High Court from time to time.

(ii) If the party intended to be served with notice is a respondent who has not entered an appearance, the applicant shall file the notice and the prescribed fees for service together with the petition, and a copy of any affidavit filed therewith, and thereupon the notice and copy of such affidavit shall be served in the same manner as a notice of appeal.

(iii). In case of urgency, the applicant may apply to the Registrar that the petition may be posted for hearing without notice to any party. If at the hearing notice is directed to be given, unless otherwise ordered, the Registrar shall insert in the notice a day for the further hearing not less than three weeks from the date of hearing.

**14. Notice not to be issued in certain cases:-**

Unless the Court otherwise orders notice need not be given to a party who has not entered an appearance.

**15. Duration of notice:-**

Unless otherwise ordered, the day fixed for hearing shall be not less than 14 days from the date of presentation of the petition and the notice shall be served not less than seven days before the day so fixed.

**16. Service of affidavit:-**

Any affidavit intended to be read in support of the petition shall be filed therewith and notice thereof shall be given to the other parties. If any party served with notice intends to use an affidavit upon the application he shall, not less than three days before the hearing, file the same in Court and give notice thereof to the applicant.

An affidavit in respect of which default has been made shall not be read in evidence, except by leave of the Court.

**17. Court may issue notice:-**

(a) If on the day fixed for hearing it appears that notice has not been served, the Court may order notice to be issued or may dismiss the petition.

(b) If notice is ordered and is to be served through the Court, the applicant shall pay the prescribed fees for service of notice within three days after the date of the order directing notice, and if an interim order has been made upon application it shall not be issued until the said fees have been paid.

(c) Unless otherwise ordered, the costs of the first notice only shall be allowed to the applicant upon taxation, and if it appears to the Court that the applicant is not exercising due diligence in service of the notice, the Court may order him to pay all the costs of the application.

(d) In the event of the Admission Judge of the day, being indisposed or otherwise unable to deal with admission work, the applicant should set out in his application to the Judge before whom he moves-

(i) the reason why the application should be regarded as imperatively urgent:

- (ii) the dates on which the necessary documents were available; and
- (iii) the cause of his not having applied in the ordinary course to the Admission Judge.

**18. Connecting Cases:-**

No application shall be required for connecting cases arising out of the same decree, judgment or order and such cases shall be connected whether there be any application or not.

When any other cases are sought to be connected, a properly stamped application shall be presented to the Registrar (Judicial) after giving notice to the Advocates for all the other parties to such cases. The signature of an Advocate on such application shall be sufficient indication that notice has been given to him. Any party desiring to contest the application may file an objection within ten days. Where no objection has been filed, the Registrar (Judicial) may pass orders on the application. Where an objection has been filed, the application shall be listed before the Court for orders.

**D. MISCELLANEOUS**

**1. Registrar (Judicial) to be the taxing officer:-**

The Registrar (Judicial) of the High Court shall be the Taxing Officer within the meaning of Section 5 of the Court Fees Act.

**2. Power to impound documents:-**

The Registrar (Judicial) is authorized to examine and impound under Section 33 (2) (b) of the Indian Stamp Act, 1988, any instrument not duly stamped.

**3. Calling the records:-**

On the admission of Civil Revisions, First Appeals and Second Appeals, the records of the Subordinate Courts shall be requisitioned automatically;

Provided that where main proceedings in the case are pending before the lower Court, the records shall be sent for only where the Court so directs specifically.

4. **Supply of copies to the Advocate General:-**

(i) Copies of all bail applications received in the High Court relating to criminal cases pending in lower Courts, when bail has already been refused by the lower court, shall be supplied to the Advocate General by the Registrar (Judicial) to enable him to appear, if desired, on behalf of the Government, provided that hearing of any particular case by the Judge to whom it is assigned is not delayed by this procedure.

(ii) Copies of applications presented in the High Court by complainants under Section 378 (4) of the Code of Criminal Procedure for special leave to appeal against the orders of acquittal shall be supplied to the Advocate General and an endorsement to that effect obtained from him before filing them in the High Court.

5. **Particulars to be mentioned in the application:-**

In every application for bail presented to the High Court, the petitioner shall state whether the similar application has or has not been made to any other Court, and if made, shall state the result thereof. An application which does not contain this information shall be returned for re-submission with the necessary information.

6. **Time for removing objections:-**

Whenever any objection is taken by the office to the papers presented that they are not in accordance with the relevant Rules, the maximum period for removal of such objections shall be seven days at a time and 20 days in the aggregate. If the period taken by the concerned party for removal of the objections exceeds the time limits specified above, the Registry shall not accept the papers unless the delay in removing of such objections is condoned on an application by the party.

7. **Office report:-**

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No memorandum of appeal or objections under Rule 22 or 26 of Order XLI of the Code and no application for revision shall be presented unless it bears an office report specifying--

- (a) in the case of a memorandum of appeal or objections, or an application for revision, that it is within time or, if beyond time, the period by which it is beyond time;
- (b) whether the case is or is not such as may be heard by a Judge sitting alone;
- (c) whether it is accompanied by the necessary papers if any;
- (d) whether any court-fee is payable or not;
- (e) where court-fee is payable, whether the court-fee paid is sufficient and in case it is deficient, the extent of such deficiency; and
- (f) whether it is drawn up in accordance with these Rules, or other law and, if not, in what manner it is defective.

Where a report under clause (e) cannot be made without an examination of the record, the office shall state that a further report would be made on receipt of the record.

#### **8. Objection as to court-fee to be decided by Taxing Officer:-**

If the appellant or the applicant, as the case may be, or his Advocate contests the office report as to court-fee, he shall, before presenting the application or memorandum of appeal or objections, take it to the Taxing Officer for the determination of his objection and the Taxing Officer shall determine it forthwith.

If the Taxing Officer decides that there is a deficiency in the amount of court-fee paid, the appellant or the applicant as the case may be shall make good such deficiency before presenting the memorandum or application in Court:

Provided that if the limitation is about to expire and the time is too short to enable the appellant to make good such deficiency, he may



present the memorandum of appeal or application in Court and make good such deficiency within such time as may be allowed by the Court.

If the Taxing Officer is unable to decide such objection forthwith and the limitation is about to expire, the appellant or the applicant, as the case may be, may obtain from him an endorsement to that effect and may thereafter present such memorandum or application in Court.

**9. Final report as to court-fees in the First Appeal:-**

In every first Appeal, the record shall be examined by the office as soon as may be after it has been received and a final report made as to the sufficiency of court-fees.

**10. Procedure in case of insufficiently stamped documents:-**

(1) Whenever on an examination of the record under the last preceding Rule, or otherwise, the Stamp Reporter or any other officer appointed in this behalf, finds that a document has been filed without being properly stamped, he shall make a report to that effect indicating the precise amount of deficiency and such report shall be shown to the Advocate of the party concerned.

(2) Such Advocate shall at once initial the report and note thereon whether or not he contests the accuracy thereof. If he contests it, he shall within three weeks or such further time as the Taxing Officer may allow, file his grounds of objection. If no such note is made or no such objection is filed within time, he shall be deemed to have accepted the report.

(3) Where the deficiency relates to a document received in Court, the Taxing Officer shall decide such objection.

(4) Where the deficiency relates to a document received in a lower Court, the report together with the objection shall after notice to the Standing Counsel be laid before the Court for orders.

**11. Defective application or memorandum of appeal or objection:-**

If the Bench before which a motion is made for the admission of an application or a memorandum of appeal or objections finds that the application or the memorandum of appeal or objections as the case may be or the affidavit or other paper accompanying it, is not in order, or that such application or memorandum of appeal or objections is not accompanied by the necessary papers, the Bench may either return it or may, subject to the provisions of these Rules or any other law, receive it, granting time for the removal of the defect.

A motion for its admission may be made again after the removal of such defect:

Provided that nothing contained in this Rule shall have the effect of extending the period of limitation.

**12. Effect of non-removal of defect:-**

Every defective application or memorandum of appeal or objections received under the last preceding Rule shall be listed before the Court for order, immediately after the defect has been removed, and where the defect has not been removed within the time allowed by the Court, immediately after the expiry of such time. In the latter event, it shall be rejected unless the Court on a written application for sufficient cause shown decides to grant further time.

**13. Hearing under Order XLI, Rule 11 of the Code:-**

If the Bench before which a motion is made for the admission of an application or memorandum of appeal or objections finds that it is accompanied by the necessary papers, if any, and is otherwise in order and has been presented within time, it shall -

(a) in the case of a First Appeal (other than Execution First Appeal) or a memorandum of objections make an order admitting it and directing notice to be issued;

(b) in the case of any appeal admit it and after admitting it -

- (i) if it deems fit, hear it the same day under Rule 11 of Order XLI of the Code and if it is not dismissed under that rule, direct that notice be issued; or
- (ii) direct that the appeal be put up for hearing under Rule 11 of Order XLI of the Code on a future date;
- (c) in the case of an application, pass such order as may be considered proper:

Provided that nothing contained in this rule shall-

- (i) preclude such Bench from hearing any First Appeal, if consented to by the appellant, under Rule 11 of Order XLI of the Code the same day or directing that it be put up for hearing under that rule on some future date; or
- (ii) require such Bench to direct notice of an application or memorandum of objections to be issued where notice of such application or memorandum of objections has already been served on the other party or his Advocate.

#### 14. **Admission of appeal:-**

Filing of appeal before the Registrar (Judicial) does not amount to admission and a Registrar (Judicial) cannot admit appeal. The order for admission is passed by the Court.

#### 15. **Application for extension of time:-**

If the Bench finds that a memorandum of appeal or objection or an application for revision presented beyond time is otherwise in order and is accompanied by the necessary papers, if any, as well as an application for extension of time supported by an affidavit, it shall take such application into consideration. If the application is rejected the memorandum or an application for revision shall also be rejected, but, if notice of the application is directed to be issued the memorandum shall

be put up for orders along with the application for extension of time in due course.

**16. When memorandum of appeal may be presented to the Registrar (Judicial):-**

(1) On any working day on which Judges are not sitting a memorandum of appeal or objections or an application for revision or review may be presented before the Registrar (Judicial) during Court hours. On the last day of limitation the Registrar (Judicial) may receive a memorandum of appeal or objections or an application for revision or review or view even after Court hours where the appellant or applicant was unable to present it in Court:

Provided that the Registrar (Judicial) may not receive memorandum or application if it is not in order.

(2) The Registrar (Judicial) shall direct that the memorandum of appeal or objections or the application for review received under sub-rule (1) be put up for order before the Court or before himself if he be authorized to deal with it.

**17. Presentation of appeals on the re-opening day after Vacation:-**

(1) Notwithstanding anything contained in this Chapter every memorandum of appeal or objections under Rule 22 or 26 of Order XLI of the Code or an application for revision may be presented before the Registrar (Judicial) and not in Court on the day on which the Court reopens after the vacation or on any other day if so directed by the Chief Justice.

The office shall thereupon submit a report as early as possible and on receipt of such report, the Registrar (Judicial) shall direct that all memorandum of appeal or objection or applications for revision which are not reported to be defective in any way shall be registered and numbered.

In the case of appeals and objections mentioned in clause (a) of Rule 7 after they have been registered and numbered, he shall direct High Court of Himachal Pradesh Appellate Side Rules, 2018

notice to be issued except that no notice shall be necessary in the case of a cross-objection a copy whereof has already been served on the appellant or his Advocate.

In the case of other appeals after they have been registered and numbered he shall order that they be put up for hearing under Rule 11 of Order XLI of the Code. They shall thereafter be listed as early as may be before the Court for such hearing.

In the case of applications for revision after they have been registered and numbered he shall order that they be put up as early as may be before the Court for orders.

(2) If it is desired that a copy of any judgment or formal order required to be filed along with a memorandum of appeal presented under this Rule be dispensed with, a note to that effect shall be made on the memorandum. If no such note is made, a subsequent request for that purpose shall not be entertained. Where such note has been made the Registrar (Judicial) shall pass suitable orders.

If such copy is not dispensed with a period between the day on which the appeal was presented and the day on which the order is made shall not be excluded in computing the period of limitation for the appeal, but if the copy is dispensed with the appeal shall be deemed to have been duly presented on the day on which it was filed.

#### **18. Defective memorandum of appeals or objections:-**

(1) If any defect in the memorandum of appeal or objection or an application for revision is pointed out in the office report, the Deputy Registrar (Judicial) shall immediately cause a notice of the defect to be served on the Advocate of the appellant or objector, or applicant as the case may be, requiring him to remove the defect or to file an objection within seven days of receipt of notice.

(2) The objection, if any, filed under sub-rule (1) shall, along with the report, be listed immediately for orders before the Registrar (Judicial). If

the Registrar (Judicial) allows the objection, he shall proceed to deal with such appeal or objection or application as if it had been reported to be in order, and if he rejects it, the defect shall be removed within seven days from the day of the rejection.

(3) If the defect is not removed within the time specified in sub-rule 1 & 2 or such further time as may be followed by the Registrar (Judicial) memorandum or application shall be listed for rejection before the Court and shall be rejected unless the Court for a sufficient cause supported by an affidavit grants further time for its removal. On expiry of the further time without the defect removed, the Court shall reject the memorandum:

Provided that no order passed under the provisions of this rule shall be deemed to extend the period of limitation.

## CHAPTER 7

### A. APPLICATION UNDER ORDER XXII, CODE OF CIVIL PROCEDURE:

**(i) The legal representative of deceased parties and appeals by persons who were not parties to the Decree or Order:**

**1. Procedure to make respondent the legal representative of a deceased party who died after the decree or order appealed from:-**

Whenever a party to a decree or order, desires to appeal therefrom and to make as a respondent to his appeal the legal representative of a person who, having been a party to such decree or order, has died either after the hearing and before the judgment, or after the date of such decree or order, and who, if alive, would be a necessary party as a respondent to such appeal and whose legal representative has not as such been made a party to the decree or order, or to subsequent proceedings thereunder or thereon the party so desiring to appeal may present to the High Court for admission a memorandum of appeal with the name of such legal representative mentioned therein as such as that of a respondent if at the time when he presents such memorandum of appeal for admission, he along with such memorandum of appeal, presents an affidavit stating such facts as may be necessary in support of the cause title contained in such memorandum of appeal.

**2. Appeal by legal representative, assignee, etc.:-**

Where a decree or order which is appealable to the Court affects the interest of-

- (a) a legal representative as such of a deceased party to such decree or order, or
- (b) an assignee of a party to such decree or order by assignment subsequent to the date of the decree or order, or

(c) a beneficiary in such property as was at the date of such decree or order vested in, or in the possession of, a trustee, executor or administrator or a receiver or manager appointed by a Court, who as such was a party to such decree or order, 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, though, or from any party to such decree or order, is affected, and such legal representative, assignee, beneficiary or person desires to appeal therefrom, he may name himself in the memorandum of appeal as an appellant.

He shall also present along with such memorandum of appeal an application, accompanied by an affidavit, for leave to make himself an appellant, stating in the application such facts as may be necessary to support it:

Provided that no such application shall be required if such legal representative, assignee, beneficiary or person, has already been made a party to any proceeding under the decree or order appealed from subsequent to the date on which it was passed. In such case, a note to that effect shall be made in the memorandum of appeal.

### **3. Appeals by persons other than parties to the decree or order appealed from.**

Whenever by a decree or order the interest of:-

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

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



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

(d) a person whose interest arose after the date of such decree or order by reason of any creation or devolution or interest, by through, or from any party to such decree or order is affected ;

and such beneficiary, legal representative, assignee, or person was or has not been made a party to such decree or order or to proceedings thereunder or thereon and desires to present to the High Court for admission a memorandum of appeal from such decree or order, he may name himself therein as an appellant if, at the time when he presents such memorandum of appeal for admission, he along with such memorandum of appeal presents an application for leave to file the appeal supported by an affidavit stating such facts in support of his application.

#### **4. Amendment of the memo of appeal when the deceased person made a party in ignorance of death.**

Whenever, after the memorandum of appeal has been presented to the High Court, any appellant or any party interested in the maintenance of any objection filed in the appeal under Order XLI Rule 22 or 26 of the Code first ascertains that a person, whose name appears in the memorandum of appeal as that of a party to the appeal and who if alive, would be a necessary party to such appeal or objection, had died before the memorandum of appeal was presented to the High Court or admitted such appellant or party so interested as aforesaid may, but subject to the law of limitation, apply for an order that the memorandum of appeal be amended by substituting for the person, who had so died as aforesaid, his legal representative, if at the time when he presents such application, High Court of Himachal Pradesh Appellate Side Rules, 2018

supported by an affidavit showing that such application is made with all reasonable diligence after the fact of the death of such person first came to the knowledge of such applicant or the agent, if any, acting on his behalf in that litigation.

**5. Appeal against legal representative of deceased party:-**

Where a person has died after the date of an appealable decree or order to which he was a party, any other party to the decree or order who wishes to appeal therefrom may enter the name of the legal representative of the person who has died, in the memorandum of appeal as a respondent if that person would, if alive, have been a necessary or proper party to appeal. The appellant shall also present along with his memorandum of appeal an application for leave to make such legal representative a respondent to the appeal. The application shall state such facts as may be necessary to support it and shall be accompanied by an affidavit:

Provided that no such application shall be required if such legal representative has already been made a party to any proceeding under the decree or order subsequent to the date on which it was passed. In such case, a note to that effect shall be made in the memorandum of appeal.

(ii) **General Rules as to Appeals:**

**6. Application to bring on record legal representatives of a party to show the date of death.**

Where after a memorandum of appeal has been presented to the Court, any appellant or any party interested in the maintenance of an objection filed under Rule 22 of Order XLI of the Code, is informed that any person who is arrayed as a party in such appeal or objection had died before the memorandum of appeal was presented but after the decree or order appealed from was passed, he may, subject to the law of limitation, make an application for an order that the memorandum of

appeal be amended by substituting for the person who is dead, his legal representative. Every application:-

(a) under order XXII, Rules 3 (1) and 11 of the Code by a person claiming to be the legal representative of deceased appellant to enter his name on the record in place of the deceased party;

(b) under order XXII, Rules 4 and 11 of the Code to make the legal representative of deceased respondent a party in place of the deceased; and

(c) under the second clause of Order XXII, Rule 3 of the Code, by the respondent;

shall, in addition to any particulars required by law state the date of the death of the deceased party and shall be accompanied by an affidavit.

**7. Affidavit to accompany application made under Rules 5 and 6 and application to add or substitute a party.**

Every application of the kind specified in Rule 6 of these rules and every application under Order XXII Rule 10 of the Code to make the petitioner or some other person an additional or substituted party in a suit or appeal, shall as to the allegations or facts contained in such application be verified by affidavit.

**8. Time may be allowed for filing affidavit:-**

Where an application is mentioned for substitution is presented without an affidavit, the Court may allow reasonable time for the presentation of such affidavit if it is satisfied that the applicant could not by the exercise of due diligence have procured it in time for presentation along with the application.

**9. Mode of presentation.**

Every application under Order XXII of the Code shall ordinarily be presented to the Registrar (Judicial), who shall cause the date of presentation to be entered thereon.

**10. Correction to be made:-**

When an application to have the name of the legal representative of a deceased party, or the name of an additional or substituted party, brought on the record, or to have the name of a party struck off the record is granted by order of a Judge or Bench (as the case may be), the Registrar (Judicial) shall cause the record of the proceedings in the High Court to be amended in conformity with such order.

**11. Form of amendment.**

Every person admitted on the record as the legal representative of a deceased appellant or respondent shall be described as the legal representative of A.B. deceased appellant or respondent, as the case may be and, similarly in the case of an insolvent appellant or respondent.

**(iii) Special Rule as to Appeals:****12. Powers of Registrar:-**

When an application of the kind specified in Rule 6 of these rules is presented to the Registrar (Judicial) within time in relation to an appeal pending before the Court and is not opposed, the Registrar (Judicial) is authorized to make an order granting the application and to cause the necessary amendments to be made in the memorandum of parties name, and notices to be issued to the parties concerned in the appeal.

**13. Orders to be granted by Judge**

Every application under Order XXII of the Code not falling within Rules 1 and 6 of these rules, or not granted under these rules, shall be laid before a Judge for order.

**Rule to apply to other proceedings.****(iv) Application of Rules as to proceedings other than appeals:**

The foregoing rules shall apply to all proceedings of a civil nature other than appeals, to which Order XXII of the Code is applicable.

## CHAPTER 8

### THE REPRESENTATION OF MINORS AND PERSONS OF UNSOUND MIND

#### 1. **Continuation of legal guardian in appeal:-**

Unless the Court orders otherwise, the person who was representing the minor in the lower Court as next friend or guardian shall continue to do so in the appeal.

#### 2. **Appointment of next friend or guardian.**

Whenever a Judge or Bench sees cause to appoint a next friend of a minor appellant or a guardian in the appeal of a minor respondent, and an order to that effect is passed, the Registrar (Judicial) shall cause the memorandum of parties in the appeal to be amended accordingly.

#### 3. **Rules to apply to proceedings other than appeals.**

The foregoing rules shall apply, so far as may be, to proceedings in a review of a judgment or in revision and to proceedings of a civil nature other than appeals, to which order XXXII of the Code is applicable.

#### 4. **Rules to apply in case of persons of unsound mind**

The foregoing rules relating to the representation of minors shall apply, mutatis mutandis, to the representation of persons of unsound mind, adjudged to be so under any law for the time being in force.

#### 5. **Savings for Ruler of a foreign State.**

The foregoing rules are subject to the provisions of Order XXXII, Rule 16 of the Code.

## CHAPTER 9

### THE MAKING AND FILING OF AFFIDAVITS IN THE HIGH COURT.

#### 1. Title of affidavit:-

Every affidavit used on the Appellate side shall be entitled "In the High Court of Himachal Pradesh, Shimla" and shall set forth the short cause title of the appeal or other proceedings in which the affidavit is sought to be used as evidence. An affidavit in support of, or in opposition to, an interlocutory application relating to an appeal, petition or other proceedings pending in the High Court shall be entitled as made in such appeal, petition or another proceeding.

#### 2. Description of deponent:-

Every deponent of an affidavit shall be described in such a manner that he can be identified clearly; his full name, his father's name, his age, his profession or trade, and his residential address in full shall be given.

#### 3. Contents of affidavit:-

(i) An affidavit shall be confined to statements of fact and be divided into numbered paragraphs, each paragraph being confined, as nearly as may be to a distinct portion of the subject.

(ii) When the affidavit covers more than one side of a sheet of paper, the writing shall be on one side of the sheet, and the deponent shall sign his name at the foot of each page.

(iii) When the deponent speaks to any fact within his own knowledge, he shall do so directly and positively using the words 'I make oath (or affirm) and say'.

(iv) When a particular fact is not within the deponent's own knowledge, but is stated upon information, the deponent shall use the words 'I am informed by (giving the source of the information, if possible and verily believe it to be true, and set forth the grounds of his belief, if any.

#### 4. Persons before whom affidavit is to be attested:-

The affidavits intended for use on the appellate side by the Court may be made before the Deputy Registrar (Judicial), Notary or the Oath Commissioner and it shall be only in English.

**5. Annexure to the affidavits:-**

Documents referred to in affidavits shall be referred to as Annexures and shall bear a certificate signed by the person before whom the affidavit is made in the following form:

This is the exhibit marked 'A' (or as the case may be) referred to in the affidavit of A, B, sworn (or affirmed) before me this day of 20.....

(Signed) C.D.

(Designation)

**6. Date and time to be mentioned:-**

The person before whom an affidavit is made shall state the day when and the place where the same is made and sign his name and add his designation at the end in the following form:-

Sworn (or solemnly affirm) at on this day of 20.....

(Signed) A.B.

Before me.

(Signed) C.D.

(Designation)

**7. Alterations and interlineations to be authenticated:-**

Alterations and interlineations, if any, in an affidavit shall be authenticated by the initials of the person before whom the affidavit is made and no affidavit containing any alteration or interlineations not so authenticated, or any erasure, shall except with the leave of the Court, be filed or made use of in any manner. The number of alterations or interlineations, so authenticated, shall be noted at the foot of each page under the initials of such person. Each page shall be serially numbered

at its foot under the initials of the person before whom the affidavit is made.

**8. Identification of deponent:-**

If the person before whom an affidavit is made does not know the deponent himself, he shall require him to be identified to his satisfaction. In such case, he shall specify at the foot of the affidavit the name and description of the person who identified the deponent before him.

Where there has been such identification, he shall take the impression of the left/right thumb of the deponent at the foot of the last page and the following certificate shall be appended to it:-

‘Certified that this is the impression of the left/right thumb of the deponent of the above affidavit.’

(Signed) C.D.

(Designation

**9. Provisions of Indian Oaths Act to be followed:-**

In administering oaths and affirmations, the provisions of the Indian Oaths Act (X of 1873) shall be observed.

The following forms are to be used:-

**OATH**

I, A.B., swear by Almighty God that that is my name handwriting and that the contents of this my affidavit are true’.

**SOLEMN AFFIRMATION**

I, A.B., solemnly affirm in the presence of Almighty God that that is my name and handwriting and that the contents of this my affidavit are true’.

OR



I, A.B., do solemnly sincerely and truly declare and affirm that that is my name and handwriting and that the contents of this my affidavit are true’.

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## CHAPTER 10

### A. PROCESSES ISSUED BY THE HIGH COURT IN THE EXERCISE OF THE JURISDICTION

#### 1. **Issue of notice and requisition for record:-**

Where an order has been made directing notice of an appeal, revision or reference to issue the office shall take immediate steps to cause notice thereof to be served on such persons as are indicated in this chapter and shall also give notice thereof to the Court from whose decree or order the appeal or revision has been presented or by which the reference has been made. The office shall, if not directed otherwise, also send a requisition to such Court asking it to transmit within ten days of the receipt of such requisition all material papers in the case or, if so directed, a part thereof, unless such record has already been received:

Provided that in second appeal an appeal from an order or revision papers need not be summoned unless directed otherwise or until the case is likely to be listed before the Court for hearing:

Provided further that in an appeal from order or revision directed against an interlocutory order, the record shall not be summoned unless the Court directs otherwise. In such cases, the parties may file an affidavit annexing to it copies of documents and/or evidence on which they wish to rely at the hearing.

A notice of the receipt of the record in every case, except a First Appeal, shall be exhibited on the notice board as soon after its receipt as possible:

Provided further that in case any ad interim stay order has been passed by the Court on an application such stay order shall be attached with a notice to the opposite party.

#### 2. **When record not to be requisitioned at once:-**

When a record or a portion thereof is required from a subordinate Court in appeal or revision from an interlocutory order while proceedings in the case are pending in the Court, it shall not be sent for at once and only information of the fact that all material papers in the case would be sent for when actually required shall be sent, and that Court shall submit the papers immediately on receipt of intimation that the appeal or revision is ready for hearing:

Provided that the papers shall not be summoned unless specially directed by the Court:

Provided further that when a record or a portion thereof has been summoned at the special request of a party or otherwise during the pendency of such appeal or revision for disposing of any interlocutory matter, it shall be sent back to the Court concerned as soon as possible and recalled only when the appeal or revision is ready for hearing.

A case shall not ordinarily be listed for hearing before the expiry of two weeks after the receipt of the record

### **3. Amount of process fee.**

The process fee for the services of the parties shall be paid at the time of filing the appeal, revision, review etc. at the following rates:

Up to five respondents	Rs. 400
Five respondents and part thereafter	Rs. 400

This fee will not include the charges for registered post cover or substituted service by the beat of drum or publication in a newspaper, which charges shall be paid in addition to the process fee. In an appropriate case, the Court may also ask for an additional fee to the extent of Rs. 200/- for any miscellaneous application filed during the pendency of the case.

### **4. Receipt for the process.**

No process shall be prepared or issued until the proper fee for the service thereof has been paid, where necessary, but as soon as the process fee is paid, a receipt in the form contained in the appendix to these rules shall be granted by the official receiving the same and thereafter the court fee shall be placed on the record of the case and immediately punched.

**5. Procedure on filing of Process fee:-**

On the presentation of such application, the Registrar (Judicial) may, when he is satisfied that service of process can be effected before the date already fixed for the hearing, accept the process fee so tendered and cause notice be issued for the day of hearing already fixed. Where the Registrar is of opinion that service cannot be effected before the date of hearing, he will cause the application to be laid before a Judge for orders as to acceptance of belated process fee and the fixing of a fresh date of hearing.

**6. Action on default.**

(1) Process fee tendered after the expiration of the period fixed by the Court shall be refused unless it is accompanied by an application, duly stamped with Rs. 5 Court fee under Article 1(d) (iii) of Schedule-1 to the Court Fees Act, 1870 and giving reasons for tendering process fee late.

(2). In the event of process fee not being paid and no application as provided in rules having being made, the cause will be listed for a date soon after the original date of hearing before a Single Judge or a Division Bench as the case may be, for disposal according to Order 9 Rule 2 or Order 41, rule 18 of the Code, or otherwise as the Court may order.

(3) Without prejudice to the provisions of sub-rule (1), in cases for the issuance of directions, orders or writs, where the Court grants any ex parte stay order, injunction or direction in favour of a party with notice to the other side and any process fee is required to be paid for the

issuance of the notice, the stay order, injunction or direction as the case may be, shall not be issued until the process fee has been paid. The office shall list the stay or injunction matter along with the default report before the Court immediately on expiry of ten days from the last date by which such steps ought to have been taken by the party concerned:

### **APPENDIX**

High Court of Himachal Pradesh .....

Process fee Receipt

Received on ..... (date) court fee stamp of the  
value of Rupees .....in Case No....., in  
re .....versus .....

Signature of the Receipt Clerk

(Judicial Branch)

**7. No party entitled to summon record without payment of requisite cost.-**

Except as otherwise provided, no record shall be summoned from another Court at the instance of a party unless the cost of summoning such record, if any, has been previously paid by such party.

**8. Objection as to the amount of process-fee etc. to be decided by the Registrar (Judicial):-**

Where an objection is taken as to the correctness of the amount or process-fee or cost of issuing a notice or summoning a record demanded by the office, the Advocate concerned or his clerk shall immediately bring the matter to the notice of the Registrar (Judicial) who shall decide such objection forthwith.

**9. Contents of notice.-**

The notice of an interlocutory application or an application for review shall be to appear and show cause why the application be not granted and the notice of an appeal, reference or other application shall be to appear and answer such appeal, reference or application. The date for appearance shall be fixed with due regard to the current business of the Court, the place of residence of the person to be served, the time required for service and the time necessary for entering appearance after service of notice has been effected.

**10. Persons to whom notice shall go:-**

Unless otherwise ordered by the Court or the Registrar (Judicial)-

- (a) notice of an appeal shall be issued to all respondents and proposed respondents;
- (b) notice of an application in revision shall be issued to all opposite parties or proposed opposite parties;
- (c) notice of a reference shall be issued to all parties to the case;
- (d) notice of an interlocutory application shall be issued to all opposite parties, provided that no notice of such application shall be issued to a person who has not filed a registered address and who is not represented in this Court by an Advocate;
- (e) notice of an application for appointment of a guardian shall also be issued to-
  - (i) the proposed guardian,
  - (ii) the minor, if he is not less than ten years of age, and
  - (iii) the natural guardian of the minor;
- (f) notice of an application for the removal of a guardian shall also be issued to-
  - (i) the guardian sought to be removed,
  - (ii) the proposed guardian, and

- (iii) the minor, if he is not less than ten years of age; and
- (iv) the natural guardian of the minor, if any;
- (g) notice of an application for the transfer of a case shall be issued to all parties to the proceeding sought to be transferred, other than the applicant;
- (h) no notice of any proceeding relating to a Supreme Court appeal shall be issued to any person who is not proposed to be made a respondent to such appeal;
- (i) no notice of an application for stay of execution shall be issued to any judgment-debtor; and
- (j) no notice of an application for injunction shall be issued to any person other than the person sought to be restrained.

**11. Service of notice:-**

The provisions of Order V of the Code shall apply to the service of notice in all proceedings in this Court:

Provided that--

- (a) where a party is represented by an Advocate notice of any proceeding in the case shall unless the order otherwise be served on such Advocate;
- (b) notice to a person residing in a Presidency town or notice of an interlocutory application may be sent by registered post or courier approved by the High Court; and
- (c) where the Registrar (Judicial) or the Court directs that a notice be served in a particular manner it shall be served in such manner.

**12. Application for summoning record, register or document:-**

Any party desiring to summon a record, register or document from a Court or office shall make an application to the Registrar (Judicial) for that purpose. Such application shall--

- (a) be signed by the party or his Advocate;
- (b) be accompanied by a statement signed by the Advocate stating;
  - (i) that such record, register or document was before the lower Court and that in his opinion the summoning thereof is necessary for supporting or opposing the case or another proceeding in which the application is made, or
  - (ii) that the record, register or document was not before the lower Court and giving reasons why it is necessary to summon it; and
- (c) contain all such particulars as may be necessary to enable such record, register or document to be summoned, including--
  - (i) the name of the Court or the office from where the record, register, the document is to be summoned,
  - (ii) the description of such record, register or document,
  - (iii) in the case of a register or document, the language in which such register or document is written and the date and the year, if any, which it bears.
  - (iv) in the case of a register or document, forming part of any record, the date on which such register or document was filed and description of such record including the date of the decision, if any; and
  - (v) where the record desired to be summoned is the record of a decided case, the date when the case was decided;

Provided that the Registrar (Judicial), if otherwise satisfied that the summoning of record, register or document is necessary, may dispense with the statement mentioned in Clause (b) or, if not satisfied by such, statement that a record, register or document is relevant or material, may before summoning it, require an affidavit stating clearly how it is relevant or material :



and provided further that the Court may at any stage of the proceeding if satisfied that the summoning of a record, register or document is necessary, dispense with such application or statement.

**13. Deposit of cost for summoning record, register or document:-**

No requisition for a record, register or document ordered to be summoned at the expense, of a party shall be issued by the office unless the cost of summoning it and, if the record ordered to be summoned includes registers or account books, an equivalent additional sum in respect of each such register or account-book, is deposited as cost in the Court.

If the party at whose expense a record has been ordered to be summoned, deposits only the cost of summoning the record and does not specify in his application the registers or the account-books to be summoned, only the record without such registers and account-books shall be sent for.

**B. SERVICE OF NOTICES:**

**1. Mode of service of notice:-**

Unless otherwise ordered, every notice issued in respect of proceedings in the High Court shall be sent in the first instance to the address of the respondent given in the memorandum of appeal or petition, as the case may be, by means of registered post, prepaid for acknowledgment. An acknowledgment purporting to be signed by the respondent shall be deemed to be sufficient proof of service of such notice:

Provided that a notice issued in respect of the following proceeding shall, in the first instance, be sent through Courts:-

- (i) Injunction.
- (ii) Notice to a proposed guardian ad litem :

Provided further that the Court may, in addition to the service of notice in the manner as aforesaid, whether in the first instance or subsequently, order service of notice privately also, by registered post pre-paid for acknowledgment of such service of the notice, together with an affidavit of such service.

An acknowledgment purporting to be signed by the respondent or respondents, as the case may be, filed together with an affidavit of service, shall be deemed to be sufficient proof of service or notice in the proceedings.

**2. Service of notice on advocate:-**

(i). When, in an appeal or petition of revision, appearance has been entered by a practitioner for a respondent, before the notice of appeal is served on him, a copy of the notice shall be served by the Registrar (Judicial) on the practitioner immediately on his entering appearance.

(ii) Any appeal or other proceeding instituted in the High Court before the disposal of the main proceeding in the Subordinate Court notice shall be served on the practitioner who represents the party in the main proceeding in the Subordinate Court whose address must be furnished by the appellant/petitioner and such service on such practitioner shall be deemed to be sufficient proof of service on such party in the proceedings. Where a party is not represented by a practitioner in the main proceeding, notice shall be served on the party direct.

(iii) Where the practitioner on record for a party declines to receive such notice, the case shall be posted before Court for orders.

**3. Substituted Service:-**

(i) Where the Court is satisfied that there is reason to believe that the respondent is keeping out of the way for the purpose of avoiding service, or that for any other reason the notice cannot be served in the manner above stated, the court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court house, and

also upon some conspicuous part of the premises in which the respondent is known to have last resided or carried on business or personally worked for gain or in such other manner as the Court thinks fit.

(ii) Service substituted by order of the Court shall be as effectual as if it had been made on the respondent personally; and

(iii) Where service is substituted by order of Court, the Court shall fix such time for the appearance of the respondent as the case may require.

**4. Publication in newspaper:-**

Where the Court acting under sub-rule (i) of Rule 3 orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the respondent is, last known to have actually and voluntarily resided, carried on business or personally worked for gain.

## CHAPTER 11

### **A. PREPARATION OF PAPER BOOKS IN FIRST APPEALS AND ORIGINAL SIDE APPEALS:**

#### **1. Exclusion of papers from paper-book by order of Chief Justice:-**

The Chief Justice may by general or special order direct that any copy or paper required under these Rules to be included in a paper book be not so included therein. In such case, the original paper on the record of the case shall be entered in the general index and clearly flagged.

#### **2. Inclusion of papers in paper-book by order of the Bench:-**

Where the Bench hearing the case requires any paper not on the paper-book to be copied, transliterated or translated, typed copy or transliteration or translation, of such paper, shall be included in the paper-book.

#### **3. Inclusion of transliteration or translation instead of a copy in paper-book:-**

The Chief Justice may from time to time issue directions as to the manner in which and the conditions according to which transliteration or translation of any paper on the record of a case may be prepared for inclusion in the paper-book instead of a copy as required by these Rules.

#### **4. Examination of records:-**

Immediately on the receipt of a record, the office shall examine its condition and note on the form for transmission of record received along with the record the date of its receipt and its condition. The record shall thereafter be examined and if on such examination it is found that any paper is missing from the record or is mutilated, or that the record is in any other respect defective, a note thereof shall be made forthwith on the back of the aforesaid form and it shall be laid before the Registrar (Judicial) for such orders as he may deem fit to pass.

#### **5. Preparation of paper books in the first appeal from orders.**

In regular first appeals and original side appeals from orders admitted to a hearing, a typed/cyclostyled/Photostat/Scanned paper book shall be prepared;

Provided that the Court may, either on its own motion or on the application of any of the parties to the appeal, dispense with the preparation of the paper book.

#### **6. Preparation of paper books in the first appeals from decrees.**

In regular first appeals and original side appears from decrees admitted to a hearing, a typed/cyclostyled/Photostat paper book shall be prepared only when a specific order is passed in the Court.

#### **7. Contents of paper book**

In the absence of an order to the contrary, the paper book shall consist of:-

- (i) the pleadings of the parties and issues;
- (ii) the transcript of the evidence of the witnesses, translated into English, if in vernacular.
- (iii) the judgment and decree;
- (iv) the grounds of appeal;
- (v) Memorandum of cross-objection, if any
- (vi) the order of the Bench admitting the appeal;
- (vii) documents allowed to be included by an order of the court

Record not included in the paper book may be referred to at the hearing.

#### **8. General instructions for preparation of Paper Book:-**

While preparing the paper book the following instructions be followed-

- (a) All evidence and documents not relevant to the subject-matter of the appeal and documents not proved or not forming part of the

record shall be excluded and every effort should be made to reduce the bulk of the paper book.

(b) Duplication of documents and unnecessary repetition of headings and other formal parts of documents should be avoided.

(c) Long series of documents, such as accounts rent rolls, inventories etc., should not be typed in full unless absolutely necessary, only short extracts or specimens may be included.

(d) If more appeals than one have been preferred from the same decree, the same evidence or document shall not be included in more than one paper book.

(e) Where there has been a previous appeal to this Court arising out of the same suit, and a paper book has been filed, all papers included in such paper book shall be excluded from translation and typing in the subsequent appeal provided that sufficient number of copies of the paper book of the previous appeal is available for the use of the Judges and the parties.

(f) The title of the appeal giving its serial No. name of the parties, nature of the suit, the name of the Court with the district and the date of the decree appealed against shall be described at the top.

**9. Power of court to permit reference to record:-**

Any part of the record not included in the paper book may be referred to at the hearing with the permission of the Court.

**10. Application for inclusion of documents in the paper book and cost of typing.**

(i) The Court, may either on the application made by the appellant within 30 days from the date of the admission of the appeal or on the application of the respondent within 30 days from the date of service of notice of the appeal, permit the inclusion in the paper book all or any of

the documents duly proved by either party in the trial Court after being translated into English, if in vernacular.

(ii) The cost of including the documents specified in rule 7 (i) to (v) shall be borne by the appellant and paid as provided for in rules 13 and 14.

(iii) The cost of including the documents specified in rule 7 (vi) shall be borne by the party at whose instance they are so included, the cost being shared equally where a document is included at the instance of more than one party. The cost shall be paid within 30 days from the date of the order under sub-rule (i).

#### **11. Order of documents in the typed/cyclostyled or photocopied paper book.**

All documents included in the paper book shall be typed/cyclostyled or photocopied according to Chronological order, first those produced by the plaintiff and then those produced by the defendant. On each document shall be endorsed the order by and date on which it was admitted by the trial Court.

Provided that when counsel for both the parties agrees that the documents should be arranged for convenience in a different order, the document shall be typed/cyclostyled or photocopied in the order. In that case, a footnote shall be added to the first page of the volume of documents that the documents have been typed/cyclostyled or photocopied in the order suggested by counsel for the parties.

#### **12. Translation of vernacular documents.**

Vernacular documents typed by the desire of parties shall ordinarily be translated and not transliterated unless especially desired by the party at whose instance they are included in the typed/cyclostyled or photocopied record.

#### **13. Initial deposit by appellant.**

In every appeal in which under these rules a paper book has to be prepared, the appellant shall, with his appeal, attach a receipt for a sum of one hundred rupees which should be deposited with the Treasurer of the High Court to cover the cost of typing the record. No first appeal from a decree shall be received unless it is accompanied by such receipt.

**Exception:** - This rule does not apply to an appeal filed by an indigent person in which case the appellant will be required to pay the approximate cost of printing or copying of such portion of the record as the Judge admitting the appeal may order.

#### **14. Further deposits.**

(a) If the deposit required under Rule 13 proves insufficient to cover the cost of that part of typed/cyclostyled or photocopied paper book which is to be borne by the appellant, the Registrar (Judicial) may, by a notice in writing, require that such further deposit as seems to him necessary shall be made within one month.

(b) If such further deposit be not made within one month of the date of receipt of the notice, the appeal shall, on the expiry of that period, be laid before a Judge for orders who may, in his discretion, grant further time or dismiss the appeal. The Judge may further, in his discretion discharge or modify any ad interim orders passed earlier in the case. The case shall be laid before a Judge for orders every time the default is repeated. If the default is made by the respondent, then the Judge may pass an order that the paper book be prepared according to appellant(s) list or he may pass such other orders as he thinks fit.

**Note:** If the total sum required as deposits exceeds Rs. 200/-, the matter will be reported for the orders of a Judge.

#### **15. Period for further deposit may be enlarged**

The period fixed by Rule 13 for the payment of the deposit may, on cause being shown in an application duly stamped, be enlarged by an



order of the court so as to permit the amount of such deposit to be paid by installments.

**16. Number of paper books to be prepared.**

In the absence of a special order in any particular case, six copies of the record shall be prepared.

**17. Supply of copies of paper books to the parties.**

The appellant and respondent may each obtain one copy of the typed/cyclostyled/photocopied paper book free of charge and one additional copy free of charge for each advocate employed in excess of one. Additional copies, if available, may be purchased at such rate as may be prescribed from time to time.

**18. Copies to be supplied before hearing.**

Parties and Counsel shall be entitled to receive copies of the paper book on application to the Registrar (Judicial) at least one month before the date fixed for the hearing.

**19. Typing expenses to be included in costs.**

At the foot of every paper, the book shall be noted the amount of the typing/cyclostyling/photocopying and incidental charges, and the party from whom levied, and such amount shall be included in the costs of the appeal unless the Court shall in any case otherwise direct.

**20. Refund of the balance of the cost.**

Should the amount so charged be less than the sum or sums deposited under Rules 13 & 14, the Registrar (Judicial) shall refund the unexpended balance to the party by whom the deposit was made. Should it be more he will take action under Rules 13 or 14.

**21. Matters to be referred to Court.**

The Registrar may and, if so required by either party by petition duly stamped, shall refer to the Court and matter not herein expressly required to be referred.

**22. Reference to be dealt with by one Judge**

For the purposes of these rules, when an order of the Court is required, the order of one Judge shall be sufficient and such order, subject to reconsideration by the Bench hearing the appeal, be conclusive.

**23. Supplementary typed/cyclostyled or photocopied paper book.**

(a) When an order has been made by a Division or Full Bench, under Order XLI, Rule 25 or Rule 27 of the Code in an appeal to which these rules have been applied, and additional evidence has been taken in pursuance of such order, such number of sets of typed/cyclostyled/photocopied paper book be prepared of (i) the order made under Order XLI Rule 25 or Rule 27 of the Code, and (ii) the proceedings taken thereunder or any part thereof as may be required for the use of the Bench.

(b) The Court may by order/direct, by which party or parties the expenses of preparing the supplementary record or of any part thereof shall be borne in the first instance.

**24. Applicability of amended rules to the pending appeals.**

Pending appeals shall be completed for hearing in accordance with the rules as amended. The amount deposited by a party to cover the cost of preparation of a typed/cyclostyled or photocopied paper book shall be refunded to it to the extent it has not been utilized for the purpose.

**SCHEDULE-A**

Index of the papers included in the paper book.

First Appeal No.....of  
(Name)..... (Plaintiff or Defendant)-Appellant.  
(Name).....Defendant or Plaintiff-Respondent

Sr. No.	Date of	Description of the documents	Pages
	Document etc.	Etc.	

- 
- 1.
  - 2.
  - 3.
  - 4.
  1. Petition or Plaint.
  2. Written statement of defendants
  3. Plaintiff's replication to above
  4. Defendants rejoinder to above
  5. Issues.
  6. Plaintiff's oral evidence
  7. Defendant's oral evidence (each  
Witness by name).

8. Notes of the arguments advanced by the parties.
  9. The judgment of the trial Court.
  10. Petition or appeal to the High Court.
  11. Order of the Judge admitting the appeal to a Bench.
  12. Documents referred to in the plaint or considered in the judgment or duly proved by either of the parties in the Trial Court.
- N.B. - Intermediate orders of the Court should be inserted in chronological order as they occur.

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### **SCHEDULE-B**

The work of transcribing, transliterating, translating and typing the record will be charged for at the following rates under Rules 5 and 9:-

	Rs. P.
Transcribing the record. Per page	5.00
Transliterating the record per page	8.00

Translating and revising the record per page thereof.	10.00
Typing and revising the record per page	5.00
Typing/Cyclostyling or photocopying charges of the Record (six copies) to be prepared in 2 sets of the 3 copies each at the rate of per page	5.00

### **PAPER-BOOK IN CASES OTHER THAN FIRST APPEALS**

#### **1. Paper-book to be prepared in every case:-**

A paper-book shall be prepared in every case for the use of the Judge or Judges hearing it except in cases coming up for hearing under Rule 11 of Order, XLI of the Code or in the case of an application which is not required under these rules to be registered and numbered as a separate case or in any other case if so ordered.

Where an application which had not been registered and numbered as a separate case is listed for hearing before a Bench consisting of more than one Judge, copies of applications and affidavits supplied by the parties shall be stitched together for the use of the Judges constituting the Bench.

#### **2. Contents of paper-book:-**

A paper-book shall consist of - (i) a flyleaf, (ii) an index, and (iii) such copies as are indicated in the succeeding rules.

Ordinarily certified copies of judgments or orders filed by the appellant along with the memorandum of appeal shall be used for inclusion in the paper book. If any such copy is faint or not properly typed or not legibly written, it shall not be so included and a fresh neatly typed copy shall be prepared for inclusion in the paper-book.

#### **3. Paper-book to be type-written or computer printed:-**

Unless otherwise ordered, every copy included in a paper-book shall be typewritten or computer printed and the paper-book shall be paged. The index shall indicate the pages of all the papers included in the paper-book together with their identification numbers as entered in the general index prepared in the Court below. Papers flagged and not included in the paper-book shall also be entered in the index along with their identification numbers.

**4. Paper book in Execution First Appeal:-**

Copies to be included in the paper-book of an Execution First Appeal shall be of the following papers, namely--

- (a) memorandum of appeal;
- (b) memorandum of objections, if any, to the decree appealed from;
- (c) judgment under appeal;
- (d) application or objection disposed of by the judgment under appeal;
- (e) reply to such application or objection; and
- (f) reply to such reply, if any,

**5. Paper-book in Execution Second Appeal:-**

Copies to be included in the paper-book of an Execution Second Appeal shall be of the following papers, namely--

- (a) memorandum of appeal;
- (b) memorandum of objections, if any, to the decree appealed from;
- (c) judgment under appeal;
- (d) the judgment of the court of the first instance;
- (e) any order under Rule 25 or 28 of Order XLI of the Code, return to such order and in the case of an order under Rule 25, any memorandum of objections to such return, if any;

- (f) application or objection disposed of by the judgment of the Court of the first instance;
- (g) reply to such application or objections; and
- (h) reply to such reply, if any.

**6. Paper-book in First Appeal from an order of remand:-**

Copies to be included in the paper-book of the First Appeal from an order or remand shall be of the following papers, namely-

- (a) memorandum of appeal;
- (b) memorandum of objections to the order appealed from if any;
- (c) plaint;
- (d) written statement;
- (e) further pleadings, if any;
- (f) the judgment of the court of the first instance; and
- (g) judgment upon which the order under appeal is founded.

**7. Paper-book in First Appeal from order:-**

Copies to be included in the paper-book of a First Appeal from an order, other than an order of remand, shall be of the following papers, namely--

- (a) memorandum of appeal;
- (b) memorandum of objections to the order appealed from if any;
- (c) application on which the order under appeal was passed;
- (d) objection to such application, if any; and
- (e) judgment upon which the order under appeal is founded.

**8. Paper-book in Appeal from Appellate order:-**

Copies to be included in the paper-book of an appeal from an Appellate order where such appeal is allowed by any law, shall contain copies of the following papers namely--

- (a) memorandum of appeal;
- (b) memorandum of objections to the order appealed from if any;
- (c) application on which the order under appeal was passed;
- (d) objection to such application, if any;
- (e) judgment or order of the court of the first instance;
- (f) judgment upon which the order under appeal is founded.

**9. Paper-book in Application for Revision:-**

Copies to be included in the paper-book of an Application for Revision shall be of the following papers, namely--

- (a) application for revision;
- (b) judgment or order to which the application relates; and
- (c) if such judgment or order is once passed in appeal, the judgment or order of the court of the first instance.

**10. Paper-book in application for Review:-**

Copies to be included in the paper-book of an application for Review shall be of the following papers, namely--

- (a) application for review;
- (b) an affidavit filed in support of the application, if any;
- (c) affidavit in reply, if any; and
- (d) judgment or order to which the application relates.

**11. Paper-book in cases not otherwise provided for:-**

The paper-book in cases not otherwise provided for in these Rules shall be prepared under the direction of the Registrar (Judicial) subject to such orders as may be passed from time to time by the Chief Justice or High Court of Himachal Pradesh Appellate Side Rules, 2018

any other Judge or a Bench nominated by the Chief Justice in respect to of any case or class of cases.

**B. THE PRINTING OF PAPER BOOKS IN SECOND APPEALS  
AND REVISIONS:**

**1. Paper books when to be printed.**

Typed/Cyclostyled paper-books shall be prepared in all the appeals which are referred for hearing before a Division Bench unless the Single Judge referring the case to the Bench or the Bench to which the case is referred expressly orders, that the record shall be prepared only if express order to that effect is made at the time appeal is admitted for hearing.

**2. Contents**

The paper book shall consist of:-

- (a) copies or translations of the judgments of the lower Courts and the decree of the Lower Appellate Court ;
- (b) the grounds of appeal or revision and a memorandum of the names of the parties or, if the appeal or revision was filed in vernacular, a translation thereof; and
- (c) a copy of the order of the Judge admitting the case to a Bench.

**3. Cost of printing paper-book.**

(1) In every appeal in which the Paper book as under these rules to be printed, the appellant shall, within fifteen days of the date of the order directing such printing, deposit in the Accounts Branch of the High Court a sum of rupees one hundred and fifty to cover the cost of the paper-books at the rates specified under the schedule. In the case of cross-appeals, the cost of Paper-book shall, however, be paid by the parties in proportionate of the amount involved unless a Judge otherwise directs.

(2) An additional sum of Rs. 10 for translating the plaint and pleas shall be similarly deposited in every case in which the plaint and the



pleas are to be included in the paper-book. The plaint and pleas shall not, however, be printed except at the express request of the parties or their counsel, or when so directed by the Judge or Judges

4. **Procedure on non-payment of deposit.**

If the appellant or respondent fails to deposit the sum or sums required under rule 3 within the prescribed period, the procedure laid down in clause (b) of Rule 14 of Part A of this Chapter shall be followed.

5. **Number of copies to be printed.**

Such number of copies of the paper book shall be printed as the Court may, by general rule in that behalf or special order in a particular case, direct.

Note: - The number of copies ordinarily to be printed has been fixed at ten. Enough copies shall be printed to supply a paper book to each junior counsel engaged in the case.

6. **Supply of copies to parties.**

Each appellant and the respondent appearing separately may obtain two copies of the printed paper book free of charge, and additional copies, if available, may be purchased at the rate of hundred rupees per copy.

7. **Printing or expenses to be included in costs.**

(1) At the foot of every printed paper-book shall be noted the amount of printing and other charges, and the party from whom levied, and such amounts shall be included in the costs of the appeal unless the Court shall in any case otherwise direct.

(2). Should the amount so charged be less than the sum or sums deposited under rule 3, the Registrar shall refund the unexpended balance to the party by whom the deposit was made. Should it be more, he will take action under rule 4.

8. **Interpretation.**

For the purpose of rules 3 to 7, the expression “Appeal” shall include a petition for revision admitted to a hearing before a Division Bench or referred to a Full Bench and the expression “Appellant” shall include a petitioner in the revision petition.

**SCHEDULE** (referred to in rule 3)

The work of transcribing, transliterating, translating and printing the record will be charged for at the following rates under rule 3:-

	Rs. P.
Transcribing the record. Per page	5.00
Transliterating the record per page	8.00
Translating and revising the record per page thereof.	10.00
Typing and revising the record per page	5.00
Typing/Cyclostyling or photocopying charges of the Record (six copies) to be prepared in 2 sets of the 3 copies each at the rate of per page	5.00

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**C. THE TRANSLATION OF CERTAIN VERNACULAR DOCUMENTS PRESENTED TO THE HIGH COURT.**

**1. What documents to be translated and at whose expense.**

Such vernacular documents filed in the High Court in its civil appellate or civil revision, civil writ jurisdiction, as may from time to time be prescribed by the Court shall be translated and subject to Rule 4, the expense of such translation shall be paid by the appellant or petitioner.

**2. Agency for translation and scale of charges.**

The translation shall be made and certified by such agency as the Court may from time to time appoint and the maximum total charges shall not exceed rupees ten for one thousand words.

### 3. **Initial deposit**

(i) On the admission of an appeal, revision petition or civil writ petition to a hearing, the appellant or the petitioner shall deposit within a period of 15 days from the date of such admission; the amount required to defray the cost of translation of the vernacular documents, if any.

(ii) If the deposit under sub-rule (1) is deemed insufficient to cover the cost of translation, the Registrar (Judicial) may, by a notice in writing, require that such further deposit as seems to him necessary shall be made within 15 days of the service of the notice.

(iii) If the deposit under the foregoing rules be not made within the period prescribed, the case shall on the expiry of that period be laid before a Judge for orders who may, in his discretion grant further time or dismiss the appeal or the revision or the writ petition. The Judge may further in his discretion discharge or modify any ad-interim order passed earlier in the case. The case shall be laid before a Judge every time the default is repeated.

(iv) The Registrar (Judicial) shall refund the deposit or the unexpended balance to the party by whom the deposit was made, in those cases which are disposed of by compromise or otherwise, before the translation of the vernacular documents or where this deposit exceeds the actual charges.

## **SPECIAL PROVISIONS RELATING TO PROCEEDINGS IN APPEALS FROM ORDERS OF ELECTION TRIBUNAL**

### 1. **Preliminary:-**

The provisions of this Chapter shall govern appeals under Section 116-A of the Representation of the People Act, 1951.

**2. Accompaniment of a memorandum of appeal:-**

Every memorandum of appeal shall be accompanied by--

- (a) a certified copy of the order against which the appeal is directed;
- (b) a list setting out the documents on which the appellant relies and which he would include in the paper-book, together with as many typed copies of the list as there may be parties to be served;
- (c) as many typed copies of the memorandum of appeal as there may be parties to be served, together with two extra copies;
- (d) an affidavit setting out the present address of the respondent where he can be served;
- (e) tender deposit receipt for Rs. 25 issued by the account branch of the Court, towards the cost of publication of the notice;
- (f) postal envelopes bearing requisite postage stamps to enable service to be effected on the respondent or respondents by registered post acknowledgment due; and
- (g) the Government Treasury receipt as contemplated by Section 119-A of the Act.

**3. Service by post:-**

Where the postal acknowledgment has been duly signed or where the envelope has been returned with the endorsement "Refused" the respondent shall be deemed to have been served.

**4. Publication of notice in newspaper in addition to postal service:-**

In addition to service through the post, notice of the appeal shall simultaneously be published in a newspaper selected by the Registrar General.

**5. Deposit of excess amount to cover cost of publication of notice and its refund:-**

Where the cost of publication in the newspaper exceeds Rs. 25, the Registrar (Judicial) shall call upon the appellant to deposit the excess amount in Court within a time to be fixed by him. On failure of the appellant to deposit such costs, the appeal shall be laid before the Court for dismissal. In case the cost of publication is less than Rs. 25, the appellant will be entitled to a refund of the amount paid by him in excess.

**6. Supply of paper-book by appellant:-**

The appellant shall, within fifteen days from the date of filing the appeal, supply to the Court as many typed copies of the paper-book as there may be parties to be served together with two extra copies for the use of the Court:

Provided that the Registrar (Judicial) may, in special circumstances, extend the period of supplying the paper-book up to a fortnight on a written application made to him in this behalf.

**7. Contents of paper-book:-**

The paper-book shall consist of a flyleaf and index and copies and transliterations or translations of the following papers, namely:

- (a) election petition;
- (b) written statement;
- (c) further pleadings, if any;
- (d) statements of parties or their pleaders recorded under Rules 1 and 2 of Order X of the Code;
- (e) judgment under appeal;
- (f) memorandum of appeal; and
- (g) such evidence, oral or documentary, or other papers, except ballot papers, as the appellant may wish to refer to.

**8. Supplementary paper-book by respondents:-**

On the date fixed for appearance of the respondent, the respondent shall be supplied with a copy of the paper-book filed by the appellant and shall be required to intimate in writing on the next working day if he wants to file a supplementary paper-book containing such other evidence, oral or documentary, or other papers as he may wish to refer to. In case he gives this intimation, he shall file three typed copies of the supplementary paper-book within fourteen days of the intimation referred to above.

**9. Certificate of correctness of paper-book:-**

The correctness of the translation and typing of the paper-book shall be certified by the party concerned or his Advocate.

**10. Taxation of cost of paper-book:-**

The Registrar (Judicial) shall determine the cost of preparation of a paper-book before the appeal comes up for hearing and the Court shall decide whether the whole or a portion, of the costs, shall be taxed.

**11. Appellant to pay fee for summoning records:-**

The fee for requisition or record shall be paid by the appellant at the time of the presentation of the appeal. The Registrar (Judicial) shall send for the record at once after the appeal has been filed.

**12. Registrar (Judicial) power to direct change in preparation of paper-book:-**

The Registrar (Judicial) may, suo motu or on a request made in this behalf, direct any change in the preparation of the paper-book.

**13. Application of certain provisions of Rules of Court to appeals under these rules:-**

Subject to the provisions of this Chapter, rules relating to First Appeal will apply also to appeals under this Chapter.

**14. Transmission of treasury receipt to the Election Commission:-**

The treasury receipt of rupees five hundred referred to in Rule 2 (g) of these rules shall, as soon as the appeal is filed, be transmitted by the Court to the Secretary to the Election Commission of India for payment of costs of appeal or refund, as the case may be, in accordance with the Court's orders.

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## CHAPTER-12

### RECORDS-THEIR INSPECTION AND GRANT OF COPIES

#### 1. Inspection of decided cases.

The inspection of records of decided cases will be allowed only under the orders of the Registrar.

#### 2. Inspection of pending cases by parties or agents.

Records of pending cases will be open, as of right, to the inspection of parties or their authorized agents or any Advocate of the Court, who is duly authorized to act in the case.

Provided that the inspection of a record will not be permitted on the date fixed for hearing without the special order of the Judge or one of the Judges before whom the case is pending.

#### 3. Access to record

With the exception of the persons above mentioned, no one will be allowed access to the record of a pending case without the special order of a Judge

#### 4. Court-fee on the application for inspection.

Applications under Rules 1 and 3 shall be made by petition only stamped with a court-fee label of Rs. 10/-. Other applications for inspection shall be in writing on a prescribed form bearing the court fee of the value prescribed below:-

- a) If the ordinary inspection is desired, a court-fee label of Rs. 10/-.
- b) If the urgent inspection is desired, a court-fee label of Rs. 20/-.

Note: - (1) No fees should be charged for the inspection of records in Civil and Criminal cases by the Advocate General or the Public Prosecutor, as such, or by a counsel appearing for Government in Civil and Criminal cases or by counsel appearing for accused or appellant in cases where



the latter is indigent person or is defended by counsel provided at Government expense.

Note: - (2) No fee shall be charged for inspection by parties and counsel in Criminal cases but fees will have to be paid in case of a:-

- (a) the second inspection of the same record, or
- (b) inspection on the day the application for inspection is made.

**5. Contents of application and when to whom to be presented.**

The application must distinctly specify the record of which inspection is desired and shall be presented to the Registrar.

- (a) when the ordinary inspection is desired between the hours of 10 A.M. and 3 P.M.; and
- (b) when the urgent inspection is desired on the same date between 10 A.M. and 11 A.M

**6. Hours of inspection.**

The Registrar (Judicial) will arrange to procure the record of which inspection is desired and will allow inspection

**7. Copying in pen and ink marking not allowed but taking of copy and notes in pencil allowed**

No mark shall be made on any record or paper inspected. The copying of any document or portion of the record is strictly prohibited. However, the party or his counsel can make a memorandum of the date, the nature of the document and the names of the parties thereto. Any person infringing or attempting to infringe the rule shall be liable to be deprived of the right to inspect records for such period as the Judges may think fit.

**8. Inspection of records on a single fee.**

Except in the case of connected records, inspection of which has been permitted for a single fee, access will be permitted to the record of one case only at a time.

**9. Inspection of records for more than one day.**

The fee provided in Rule 4 shall entitle the applicant to inspect the record on one day only. If inspection of record is desired on another day, a fresh application shall be required and a fresh fee paid.

**10. Inspection of police papers prohibited.**

Police papers received in the Court in connection with any pending criminal cases, and translation of such papers shall not be available for inspection, either by the convict or accused or by his agent or by any legal practitioner retained on his behalf.

**11. Ordinary and urgent applications how dealt with**

All applications bearing a Court-fee label of Rs. 10/- shall be dealt with by the office at once. All ordinary applications shall be dealt with in the ordinary course of business.

**12. Inspection by Advocate General of certain records for purposes of filing an appeal against acquittal.**

When any records are in the custody of the High Court, the Registrar of the High Court, on being informed by the Government that an appeal against acquittal is contemplated, shall hand over the required record to the Advocate General on demand during such period as is not required for the purposes of the appeal.

**13. Inspection of registers free of charge.**

In order to trace particulars of a suit or document, counsel may, with the previous permission in writing of the Registrar (Judicial) inspect Civil and Criminal registers of the Court on behalf of parties, free of charge.

Any inspection of records and registers under the above rules shall be only in the presence of a court official.

Nothing in these rules shall entitle any person to inspect:-

- (i) the Judges notes and minutes;
- (ii) Correspondence not strictly judicial and
- (iii) Confidential correspondence.

## **B-THE GRANT OF COPIES OF RECORDS**

### **(i) Persons entitled to copies:**

#### **1. Copy to be granted to the person entitled.**

A copy or translation of a judicial record may be granted in the manner prescribed by these rules to any person who is legally entitled to receive it.

#### **2. Party entitled to copies of records and exhibits**

(i) A party to a suit or appeal is entitled, at any stage of the suit or appeal to obtain on payment copies or the record of the suit or appeal including exhibits which have been put in and finally accepted by the Court in evidence.

(ii) A stranger to the proceeding may at any time obtain copies or plaint, memorandum of appeal, written statements, affidavits and petition filed in the suits on the appeal on payment only with the express permission of Court in writing granted on a petition supported by an affidavit.

#### **3. Grant of copies of exhibits to strangers.**

A stranger to the suit or appeal has no right to obtain copies of exhibits put in evidence, except with the consent of the person by whom they were produced or under the orders of the Court.

#### **4. Grant of translation.**

Any person entitled to obtain a copy of a judicial record may apply for a translation thereof.

**(ii) Application for copies and translation of record:**

**1. Mode of presenting.**

(i) Copies or translation of judicial record of the High Court will be supplied on application made to the Court.

Note. - Every such application shall bear a Court fee label of Rs. 10.

(ii) Every such application may be presented in the ordinary course in the Registry.

(iii) The application for obtaining an urgent copy of the order shall be made to the Reader/Court Master of the Court, pronouncing the judgment or order, as the case may be, on a plain paper bearing a Court fee label of Rs. 10/- immediately after the judgment or order is pronounced and when the record is still available with him.

Note 1. - The Reader/Court Master concerned shall send the application to the branch concerned along with the file. The branch will, in turn, arrange to deliver the file as also the application to the Copying Branch immediately on its receipt from the Reader/Court Master of the Court concerned.

Note 2.- The Copying Agency shall receive the charges due in respect of the copy from the applicant in advance between 12.00 noon and 1.00 p.m. the same day and issue him a receipt for the charges received and indicate on the receipt the date when an applicant should turn up to obtain the copy.

**2. Particulars of application:-**

Every application for a copy of translation shall contain the following particulars, namely:-

(a) the name of the cause;

- (b) if the cause is pending; the date of institution thereof and the date fixed for the hearing if any;
- (c) if the cause has been decided, the date of decision;
- (d) where the information referred to in clauses (b) and (c) is not available to the applicant, such other information as may be available to the applicant, such other information as may be sufficient to enable the cause to be identified and traced;
- (e) the nature of the document, a copy of the translation of which is required;
- (f) in the case of a copy, whether for private or general use;
- (g) the name and full postal address of the applicant.

### 3. **Return of application:-**

An application which is not in proper form shall be returned for an amendment to be represented within a time limit of seven days and in case the application is not represented within the period specified above, it shall be struck off.

### 4. **List of application:-**

Every day a list showing the applications in which the records have been received, and the number of stamp papers required in each case shall be prepared and affixed to the notice board of the Court between the hours of 3 and 4.30 p.m. Such lists shall remain on the board for three clear working days. Applications upon which the requisite stamps have not been deposited shall be struck off the list. After the expiry of the period prescribed for deposit of stamps the list shall be taken down and filed in the record for one year and shall then be destroyed.

### 5. **Consequences of non-payment of fee:-**

If the required stamp papers have not been deposited by 3 p.m. on the fourth working day counting from and including that on which the list was first affixed, the application shall be struck off and, unless it is

restored on an application made to the court for the purpose, copies shall be granted only on a fresh application.

**6. Restoration of application:-**

Any application for copies struck off under rule 5 or under rule 6 supra may be restored by the Court on a petition supported by an affidavit preferred for that purpose.

The petitioner shall deposit the required copy stamps along with the petition for restoration of the application for copies.

**7. Particulars in struck off applications:-**

Every certified copy, furnished after such restoration of the application for copies, shall bear an endorsement showing in addition to the details specified in rule 17 supra:

(a) The date on which the application was struck off.

(b) The date on which the application was restored to file.

Consolidated fees shall be charged for attested copies according to the following scales:-

	Rs. P.
(a) English copy First 300 words or under	10.00
Every additional 200 words or under	5.00
(b) Vernacular copy;	10.00
First 300 words or under	
Every additional 200 words or under	5.00
(c) Copies of judgments supplied for the purposes of reporting to the reporters of private Law Journals which undertake to publish only judgments approved	10.00

for reporting (per copy)

(d). Copies of judgments supplied for the purposes of reporting to the authorized representatives of newspapers which give an undertaking that copies so supplied will be used only for reporting such copies to be stamped “for reporting only”. (per copy) 10.00

### **8. Copying fee for maps etc.**

For field maps, boundary maps, tabular work and similar work a special fee, which must always be a multiple of Rs. 5 shall be fixed by Deputy Registrar (Judicial)

### **9. Fee to include cost of papers**

The above fee shall include the cost of the paper which will be supplied by Government.

Urgent copies shall be supplied at the rate of Rs. 10/- as urgent fee and Rs. 5/- per page of the material covered.

On the vernacular copy, the same charges as above.

Note. - For the above purposes, the extra fee to be charged shall be for each paper copies which can properly be regarded as a separate paper e.g. every deposition of the witness or written statement of a party or order of the Court is a separate paper. In cases of doubt as to whether a paper is separate or not, the Registrar shall decide

### **10. Credit of copying fees.**

The entire proceeds from the sale of copies shall be credited into the Treasury under a separate detailed head “XXI-Administration of Justice-General Fees, Fines, and Forfeiture.

### **11. Search fee.**

(a) A search fee of Rs. 5/- will be charged under the orders of the Registrar in cases in which an unreasonable amount of trouble has been caused in finding the original records.

(b) In such cases, the search fee payable shall be certified by the Judicial Record Keeper to the Copying Agent, who will receive it from the applicant and pay it into the Treasury to the credit of head "XXI-Administration of Justice-General Fees, Fines, and Forfeiture".

## **12. Copies of translations**

Copies of translation of records which have already been translated, or of records originally translated free of charge, will be supplied under the rules applicable to ordinary copies. Copies of translations of records which have not been translated already or of records not ordinarily translated free of charge will be supplied under the rules applicable to translations.

## **13. Time for delivery of copies.**

(i) The urgent copy shall ordinarily be delivered to the applicant within 48 hours of the receipt of the record in the Copying Branch.

(ii) In case the Copying Branch experience difficulty in securing the records, the matter shall be reported to the Registrar who shall take steps to secure the record for the Copying Branch.

(iii) Ordinary copies shall, as far as practicable, be delivered to the applicants in the order in which the fees required under these rules are deposited within a period of one month from the date of application.

## **14. Refund of fees and recovery of balance.**

If the actual amount of the charge to be made in respect of a copy of translation.-

(i) exceeds the amount deposited, the balance will be recovered before the copy is delivered;



(ii) falls short of the amount deposited, the surplus will be returned to the person entitled to the copy at the time of delivering the copy to him.

#### **15. Copies required by public officers.**

Copies of records required for public purposes by public officers as defined in section 2(17) of the Code of Central or State Government of India, shall be supplied free of charge, provided the application for copy is endorsed by the Head of the Department concerned.

Note. - For the purpose of this rule the District Magistrate will be deemed to be the Head of Department when copies of orders passed by Civil, Criminal, and Revenue Courts are required by the Prosecuting Agency for the purpose of Appeals and revisions etc. and submission to the Legal Remembrance to the Government of Himachal Pradesh, under the Law Department Manual.

#### **16. Copies to the accused persons.**

Copies of judgments of the High Court in criminal cases shall, on application made in this behalf by the accused person, be supplied free of cost.

(a) in every case in which a sentence of death or transportation for life has been passed or confirmed by the High Court.

(b) in every case where the accused person wishes to file an application for special leave to appeal to the Supreme Court as an indigent person.

(c) In any other case if the High Court so directs.

On an application being made by the Supreme Court and/or the High Court Legal Aid Committee for supply of copies of documents, judgments, and orders, etc., such copies shall be supplied free of cost by the High Court provided that the application is accompanied by a

certificate that the copies so required would be used only for a purpose connected with providing of legal aid to a person entitled to legal aid under the rules as may be in force from time to time.

All copies furnished by the Court shall be certified to be true copies and shall be sealed with the seal of the Court. The officer appointed by the Registrar (Judicial) in that behalf shall initial every alteration and interlineations in the copy, and shall also certify in his own hand, at the foot thereof, that the same is a true copy, and shall further state, on each page, the number of alterations and interlineations made therein.

**17. Endorsement on the application:-**

Every copy shall bear an endorsement showing the following particulars of the application:

- (1) No. of application.
- (2) Name of applicant.
- (3) Date of presentation of the application.
- (4) Probable date of delivery of copy
- (5) Date of requisition of record.
- (6) Date of receipt of record.
- (7) Copy prepared by
- (8) Copy compared by
- (9) By Photocopy
- (10) Date of preparation
- (11) Date of comparison
- (12) Date of attestation.
- (13) No. of words.
- (14) Copying fee
- (15) Urgent fee

(16) Agency fee Rs.

(17) Total Rs.

(18) Date of delivery.

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## CHAPTER 13

### PROCEEDINGS OTHER THAN ORIGINAL TRIALS

#### 1. **Presentation of appeals and applications:-**

Every petition of appeal or application for revision or other application in a criminal matter shall be presented in Court except where it may under these Rules or by order of the Court or the Chief Justice be filed before the Registrar (Judicial) or any other officer of the Court.

#### 2. **Order of Court on motion to admit an appeal or application:-**

Where the Bench before which a motion is made for the admission of a petition of appeal or an application for revision or other application finds that it is not accompanied by the requisite papers, if any, or is otherwise not in order or has not been presented within time it may decline to receive it or reject it or pass such other order as it may consider fit.

Where it finds that such petition or application is in order, has been presented within time and is accompanied by the requisite papers, if any, it may--

- (i) in the case of the petition of appeal make an order admitting it and directing notice to be issued; and
- (ii) in the case of an application for revision or other application dismiss it or direct notice to be issued or pass such other order as it may deem fit:

Provided that nothing contained in this Rule shall preclude the Bench from dismissing any petition of appeal under Section 384 of the Code of Criminal Procedure, 1973, or require notice of an application to be issued where notice of such application has already been served upon the other party or his Advocate.

#### 3. **Contents of petition of appeal or application for revision or other application:-**

(1) Every petition of appeal or application for revision or other application shall be accompanied by date/event wise synopsis of the case and shall further state--

- (a) the name and, where the appeal or revision is not on behalf of State, the address, of each appellant or applicant;
- (b) the name and, where the opposite party is not the State, the address, if available, of each opposite party;
- (c) the Court of whose order the appeal or revision is filed and the name of presiding officer of such Court;
- (d) the nature of the order passed including the sentence awarded, if any, by such Court;
- (e) the provisions of law defining the offence for which the accused person was convicted or acquitted by such Court or under which he was dealt with by such Court;

Where it finds that such petition or application is in order, has been presented within time and is accompanied by the requisite papers, if any, it may--

- (i) in the case of the petition of appeal make an order admitting it and directing notice to be issued; and
- (ii) in the case of an application for revision or other application dismiss it or direct notice to be issued or pass such other order as it may deem fit:

Provided that nothing contained in this Rule shall preclude the Bench from dismissing any petition of appeal under Section 384 of the Code of Criminal Procedure, 1973, or require notice of an application to be issued where notice of such application has already been served upon the other party or his Advocate.

#### **4. Contents of petition of appeal or application for revision or other application:-**

(1) Every petition of appeal or application for revision or other application shall be accompanied by date/event wise synopsis of the case and shall further state--

- (a) the name and, where the appeal or revision is not on behalf of State, the address, of each appellant or applicant;
- (b) the name and, where the opposite party is not the State, the address, if available, of each opposite party;
- (c) the Court of whose order the appeal or revision is filed and the name of presiding officer of such Court;
- (d) the nature of the order passed including the sentence awarded, if any, by such Court;
- (e) the provisions of law defining the offence for which the accused person was convicted or acquitted by such Court or under which he was dealt with by such Court;
- f) the ground or grounds, numbered consecutively, of objection to the order from which the appeal or revision is filed;
- (g) the relief sought;

and shall be signed by the appellant or the applicant, as the case may be, or by an Advocate on his behalf.

(2) A petition of appeal from an appellate order of acquittal or an application for the revision of an order passed in appeal or revision shall also state the name and description of the Court which tried the case in the first instance and the nature of the order passed by it.

(3) In a case in which a sentence of imprisonment has been awarded the petition of appeal or the application for revision shall also contain a certificate signed by the advocate for the appellant or the applicant, as the case may be, stating that the accused was not on bail or that, if he was on bail, he has surrendered to it. In a case in which bail has been granted by the court appealed from order sub-section (3) of Section 389

of the Code of Criminal Procedure, 1973, the fact shall be stated in the petition of the appeal indicating the period of which such bail has been granted.

(4) In first paragraph of application under section 482 Cr.P.C., criminal revision, transfer application or writ petition (or supporting affidavit thereof) it should be mentioned that no earlier application/criminal revision/ writ petition has been filed against the impugned order (if any) on the same or related cause of action or seeking the same or related reliefs, and no such criminal revision or transfer application for the same reliefs, and no such criminal revision or transfer application for the same relief was pending in the lower court. If any such application was pending, details of the same are to be furnished. Any substantial omission or misstatement on these facts would result in dismissal of the petition, imposition of costs and prosecution for perjury.

(5) The applicants/ appellants/ petitioner's parentage, crime number, police station, district, case number, court's designation, date of impugned order (whatever may be applicable) shall be mentioned on the opening page of the application under section 482 Cr. P.C, criminal revision, bail application, transfer application, writ petition or criminal appeal.

**5. Appeal or revision to be connected with jail appeal for revision previously filed:-**

Where a petition of appeal or an application for revision has been previously presented by the appellant to the officer-in-charge of the jail, the petition of appeal or application for revision filed on his behalf through an Advocate shall mention that fact if known to such Advocate. In such cases, the Bench Secretary shall obtain an order from Court that the two cases be connected and heard together.

**6. Copies of Judgment:-**

Every criminal appeal or revision shall be accompanied by a copy of the judgment or order appealed against or sought to be revised and where there has been an appeal or revision in a subordinate Court by copies of the judgments of all the subordinate Court:

Provided that every criminal revision shall also be accompanied by an extra copy of the judgment or order sought to be revised or extra copies of the judgments of all the Subordinate Courts, as the case may be, duly certified by the counsel, for use of the Government Advocate, and by a certificate from the Sessions Judge to the effect that no application for revision in regard to an order sought to be revised by the High Court has been made in the Sessions Courts. The applicant shall give an undertaking that he will not file a revision against the said order in the Sessions Court:

Provided further that the Court may for sufficient cause shown dispense with any such copy.

**7. Petition of appeal or application or affidavit to be accompanied by copies:-**

Every petition of appeal or application or affidavit filed in Court shall be accompanied by as many typed copies thereof as there be parties to be served, together with--

- (i) two extra copies in a Division Bench case or in an application for bail or stay or proceedings in a case pending before a Court of Session; or
- (ii) one extra copy in every other case.

No order shall issue from the Court on a petition of appeal or application until the required number of such copies has been supplied.

Such copies shall be certified to be correct by the party supplying them or his Advocate.

**8. Office report on a petition of appeal or revision:-**



After the appeal, revision or any petition specified in this chapter has been presented, the office shall make a report with regard to the following matters, namely--

In the case of an appeal or a leave petition-

- (i) whether it lies to this Court;
- (ii) whether it is within time;
- (iii) whether it is accompanied by the requisite papers;
- (iv) whether any court-fee is payable and where a court-fee is payable, whether the court-fee paid is sufficient; and
- (v) whether the appeal had been previously filed on behalf of the appellant or any other person tried along with him and, if it had been so filed, the result in case the appeal has been decided.

In the case of a revision--

- (i) whether it has been filed within the ninety days excluding the time taken in obtaining the requisite copies;
- (ii) whether it is accompanied by the requisite papers;
- (iii) whether any Court-fee is payable and if a Court- fee is payable, whether the Court-fee paid is sufficient;
- (iv) whether an application for revision had been previously filed in the Court of the Sessions Judge or the District Magistrate, as the case may be;
- (v) whether an application for revision had been previously filed in this Court on behalf of the applicant or any other person tried along with him or whether any leave petition had been preferred under Section 378, Cr.P.C. and if it had been so filed, the result in case the revision or leave petition filed under Section 378, Cr.P.C. has been decided.

**9. Cases to be registered and numbered:-**

- (1) After an appeal or revision has been admitted it shall be registered and numbered.
- (2) The following applications shall be registered and numbered after presentation as Criminal Miscellaneous cases, namely--
  - (a) application for bail;
  - (b) application for cancellation of bail;
  - (c) application for transfer of a case;
  - (d) application for withdrawal of a case from a subordinate Court;
  - (e) an application under Section 96 of the Code of Criminal Procedure, 1973;
  - (f) application for stay of operation of the order of, or proceedings in, lower court. Such application must be accompanied by the certified copy of the order assailed, including all other documents, if any, on the basis of which a particular order has been challenged;
  - (g) application for the issue of a direction, order or writ under Article 226 of the Constitution in a criminal matter;
  - (h) an application under sub-section (1) or sub-section (2) of Section 340 of the Code of Criminal Procedure, 1973;
  - (i) application for the taking of proceedings in contempt of court; and
  - (j) an application under Section 378(4) of the Code of Criminal Procedure, 1973:

Provided that an application for transfer of cases shall be accompanied by a copy of the order passed by the Sessions Judge if any.

- (3) Cases in which the Court takes proceedings under Section 340 (1) or 340 (2) of the Code of Criminal Procedure, 1973 or issues notice for contempt of Court otherwise than on an application and references under

Section 318 of the Code of Criminal Procedure, 1973 shall also be registered and numbered Criminal Miscellaneous Petition;

(4) The application aforesaid shall set out the prayer stating clearly the exact nature of the relief sought supported by an affidavit setting out in the form of paragraphs the material facts and grounds upon which the applicant relies.

#### **10. Issue of Notice:-**

If an appeal is not dismissed summarily a day shall be fixed for its hearing and notices in the prescribed form shall be issued.

If an application for revision or other application is not rejected and an order directing the issue of notice is made, a day shall be fixed for its hearing and notices in the prescribed form shall be issued.

After notices have been issued in an appeal or revision the record shall be sent for unless otherwise ordered.

In the case of an appeal under Section 341 of the Code of Criminal Procedure, 1973, the record of the case out of which the proceedings under appeal arose shall also be sent for unless otherwise ordered.

#### **11. Free legal aid to indigent accused:-**

(1) A panel of lawyers shall be drawn up every third year by the Court to represent such accused persons who are incapable of engaging any counsel for their defence due to indigence or incommunicado situation within the meaning of Section 304 of the Code of Criminal Procedure, 1973.

(2) The Panel shall consist of such number of Advocates having three years' practice at their credit, as the Court may from time to time, fix.

(3) In cases where the circumstances of the case, the gravity of the sentence and the ends of justice so require, if the accused intimates his intention to appeal to the High Court and expresses his inability to engage a counsel for the purpose, the Court shall afford him an

opportunity to name an advocate from the panel of lawyers maintained under sub-rule (1) and, as far as possible, shall assign the case of that accused person to the Advocate so named by the prisoner.

(4) The scale of fees of the Advocates serving on the Panel of the Court shall be fixed by the State Government on the recommendation of the Court, which shall, while recommending the scale of fees for various types of cases, keep into consideration the nature of the offence, the gravity of sentence and other allied matters.

(5) In order to ascertain under sub-rule (1) aforesaid whether the accused person is indigent or not, the Court shall order an inquiry to be made from the District Magistrate concerned whether he is possessed of sufficient funds to engage an Advocate at his expense in this Court.

(6) The power of appointment of the Advocate for a particular case shall be vested in the Chief Justice.

(7) The Advocate appointed under this rule to represent an accused shall be furnished with the necessary papers and allowed sufficient time to prepare the case.

(8) Where there are more than one such accused entitled to be represented by an Advocate at the State expense, the Chief Justice may appoint several Advocates to represent them if their defences are inconsistent.

## **12. Personal attendance of accused in custody:-**

Where the accused is in custody his personal attendance shall not be required unless so ordered by the Court. A prayer for the personal attendance of the accused in Court shall not ordinarily be entertained if not made in sufficient time before the date of hearing to enable arrangements to be made with the Officer-in-charge of the jail in which the accused is confined for his attendance in the Court.

## **13. Personal attendance of accused unable to appear on account of poverty:-**

Where an accused in an appeal from acquittal or in a case in which notice has been given to him to show cause why his sentence should not be enhanced though not in custody is unable to appear before the Court on account of poverty, he may make an application to the Court for permission to appear accompanied by a certificate from his Advocate that his attendance is necessary for the purposes of the case. If the Court grants such application the District Magistrate concerned shall, if satisfied as to his poverty, provide him with sufficient funds to enable him to proceed to this Court and certify the fact to the Court. When the accused appears he shall report himself to the Registrar (Judicial).

**14. Jail appeals and revisions:-**

(1) Rules 1, 2, 3, 6 shall not apply in the case of a petition of appeal or an application for revision presented by an accused person who is confined in jail to the officer-in-charge of the jail. Where a petition of appeal or an application for revision has been so presented, the officer-in-charge of the jail shall have recorded thereon the name and other particulars of the appellant or the applicant, as the case may be, the particulars of the case from which the appeal or revision arises and the dates when the application for copy of judgment was dispatched, when the copy was received and when the appeal or application was presented by the accused, and forward such petition or application along with the requisite copies to this Court with as little delay as possible.

(2) On receipt of such petition or appeal or application for revision, the office shall examine it and endorse thereon a report containing as nearly as may be the particulars required under Rule 7 and the Registrar (Judicial) shall thereafter submit it to a Judge for orders. If the case is one which cannot be dealt with by a Judge sitting alone, the orders passed by the Judge shall be laid before another Judge for concurrence before they are issued. If the Judge does not dismiss the appeal or revision summarily and orders notice to be issued, the procedure

prescribed for appeals and revisions presented in Court shall, as nearly as may be, be followed.

**15. Jail appeal to be connected with a previously filed appeal:-**

Jail appeals shall be submitted to a Judge for orders after the expiry of the period of limitation, jail appeals by accused persons convicted in the same trial being submitted together. If an appeal arising out of the same case has been presented previously in Court, the fact shall be noted on the fly-leaf before the papers are submitted to a Judge for orders and the Judge shall, if such appeal has not already been decided, direct that the appeal be admitted and connected with such previous appeal.

**16. When jail appeal is presented beyond time:-**

Where a jail appeal is presented after the expiry of the period of limitation the officer-in-charge of the jail shall submit along with it a report as to the cause of the delay. Where no such report has been submitted a report shall be called for from the jail concerned as to the cause of the delay. Such report shall be laid before the Judge to whom the appeal is submitted for orders.

**17. Information to prisoner regarding dismissal of, summary jail appeal:-**

Where a jail appeal is dismissed summarily under Section 384 of the Code of Criminal Procedure, 1973 information shall be sent to the prisoner through the Sessions Judge concerned.

**18. Revision and other applications from prisoner in jail:-**

Rules 14, 15 and 16 shall, as nearly as may be, followed in the case of a jail revision. Other applications received from a prisoner through the officer-in-charge of the jail in which he is confined shall be laid before the Judge appointed to receive the application on the criminal side for orders.

**19. Application for bail:-**

(1) No application for bail shall be entertained unless accompanied by a copy of judgment or order appealed against or sought to be revised and a copy of order passed by the Sessions Judge on the bail application for the applicant and unless the accused has surrendered except where he has been released on bail after conviction under Section 389 (3) of the Code of Criminal Procedure, 1973.

**Explanation:** - The copy of the order refusing bail passed by the Sessions Judge shall either be a certified copy or the copy furnished by the Sessions Judge free of charge to the accused.

(2) Every application for bail in a case which is under investigation or which is pending in a lower Court shall state whether an application for bail had or had not been previously made before the Magistrate and the Sessions Judge concerned and the results of such applications, if any.

(3) Save in exceptional circumstances-

(a) No order granting bail shall be made on an application unless notice thereof has been given to the Government Advocate and not less than ten days have elapsed between the giving of such notice and the hearing of such application.

(b) If the application for bail has not been moved within two days after the expiry of the aforesaid period of ten days the applicant or his Counsel shall give two days previous notice to the Government Advocate as to the exact date on which such application is intended to be moved.

(c) Where the prayer for bail is contained in a petition of appeal or application for revision, notice thereof may be given to the Government Advocate the same day prior to the hearing of such petition or application and the fact of such previous notice having been given, shall be endorsed on such petition or application along with such notice a certified copy or one attested to be true by the

counsel, of the Judgment appealed from or sought to be revised shall also be given to the Government Advocate.

(4) Every application for bail shall show prominently in the first page thereof the crime number, the police station by which and the section or sections and the Act or Rules under which the applicant is being prosecuted or has been convicted and whether such application is the first, second or any such subsequent application moved by him before this Court, and shall be accompanied by a copy of the first information report. It shall also state the following particulars, namely:-

(a) The date of the alleged occurrence;

(b) The date of the applicant's arrest.

(5) Every page of the application for bail and every page of the annexures thereto shall bear the full signature of the applicant or his counsel.

(6) In every such application shall be stated the full particulars of the previous application or applications, if any, moved in this Court by the same applicant in respect of the same crime and the date or dates on which such previous application or applications had been rejected.

## **20. Revision arising out of an order of a Judge on a Sessions statement etc.:-**

Where a Judge acting under Section 397 of the Code of Criminal Procedure, 1973 directs on the perusal of a Sessions statement or a periodical return of a judgment or otherwise that the record be sent for or that notice be given to the accused to show cause why his sentence should not be enhanced, a copy of the order accompanied by all relevant extracts and references, if any, shall be sent to the Criminal Department and the case shall be registered as a revision and proceeded with accordingly.

## **21. Notice:-**



Notice in different classes of cases shall, unless otherwise ordered, be issued as indicated below, namely--

**(1) Appeal:-**

Where an appeal has not been dismissed summarily notice of the time and place at which such appeal will be heard shall be given to--

- (i) the appellant or his Advocate, or, where the State is the appellant, to the Government Advocate, and
- (ii) where the State is not the appellant, to the Government Advocate, and, where the State is the appellant to the respondent as also to the Court appealed from.

**(2) Revision: -**

Where a notice has been directed to be issued, notice shall be given to the applicant, if any, or his Advocate and the Government Advocate as also to such opposite parties as may be arrayed in the application. Where the State is the applicant notice shall be given to the Government Advocate and such opposite parties as may be arrayed in the application.

Where the Court acting under Section 401 of the Code of Criminal Procedure, 1973 directs notice to be issued, notices shall be given to the Government Advocate and the accused or in a case in which there has been no conviction or acquittal, the parties affected by the order passed in the case.

**(3) Reference:-**

Where a notice has been directed to be issued on a reference under Section 395 of the Code of Criminal Procedure, 1973, notice shall be given in accordance with the second paragraph of Clause (2). In a reference under Section 366 of the Code of Criminal Procedure, 1973, notice shall be given to the Government Advocate and, if possible, to the accused or his guardian or Advocate.

In a reference under section 318 of the Code of Criminal Procedure, 1973, notice shall be given to the Government Advocate and, if possible, to the accused or his guardian or Advocate.

**(4) Miscellaneous Application:-**

In a miscellaneous application notice shall be given to the applicant, the Government Advocate and the opposite parties and where the application is on behalf of the State to the Government Advocate and the opposite parties

Provided that no notice of an application under Section 378 (4) of the Code Criminal Procedure, 1973 need be issued to the accused or the opposite party as the case may be.

**22. Notice to prisoner confined in jail to show-cause against enhancement of sentence:-**

Where notice is sent to the officer-in-charge of a jail for service upon a prisoner confined in the jail calling upon him to show-cause why his sentence should not be enhanced it shall require such officer to serve the notice and return it along with an endorsement showing that it has been served upon the prisoner and that he has been informed that he can appear either in person or by Advocate in the High Court and that if he desires to appear in person necessary arrangements will be made by him for his presence in that court through the district magistrate. It shall further require him to indicate whether the prisoner wishes to appear in person and show-cause against his conviction or declines to appear in person or to show cause against such conviction.

**23. Paper-book in criminal appeal:-**

Copies to be included in the paper-book of a criminal appeal (other than a jail appeal which may be heard by a Judge sitting alone) or an appeal under section 341 (1) of the Code of Criminal Procedure, 1973 or a reference under Section 366 of the Code of Criminal Procedure, 1973 or a case in which the accused has been called upon to show-cause why his

sentence should not be enhanced shall, unless otherwise ordered, be those of the following papers or such of them as may be on the record, namely--

**(A) Papers relating to investigation--**

- (i) first information report;
- (ii) confession or statement recorded under Section 164 of the Code of Criminal Procedure, 1973;
- (iii) dying declaration;
- (iv) injury report;
- (v) report of post-mortem examination;
- (vi) report of Chemical Examiner;
- (vii) report of Serologist to Government of India;
- (viii) record of identification proceedings; and
- (ix) recovery list.

**(B) Papers relating to magisterial inquiry--**

- (i) statements of witnesses recorded by the magistrate which have been brought on the record of the sessions court;
- (ii) examination of accused and his written statement, if any, and
- (iii) charge framed against the accused.

**(C) Papers relating to proceedings before the sessions court--**

- (i) amended charge;
- (ii) plea of accused;
- (iii) statements of witnesses;
- (iv) examination of accused and his written statement, if any;
- (v) important exhibits other than those included under heads A and B;

(vi) judgment.

**(D) High Court Papers.**

**Petition of appeal.**

**24. Paper-book in appeal under Section 341 (1) of the Code of Criminal Procedure, 1973:-**

Copies to be included in the paper-book of an appeal under Section 341 (1) of the Code of Criminal Procedure, 1973, shall unless otherwise ordered, be those of the following papers or such of them as may be, on the record, namely--

- (i) petition of appeal;
- (ii) judgment or order under appeal;
- (iii) application together with annexures, if any, made under sub-section (1) or sub-section (2) of Section 340 of the Code of Criminal Procedure, 1973;
- (iv) reply to such application;
- (v) an affidavit filed by parties relating to the charge;
- (vi) evidence recorded at preliminary inquiry; and
- (vii) complaint made in consequence of judgment or order under appeal.

**25. Paper-book in Criminal Revision of Jail Appeal:-**

Subject to Rule 24 the paper-book in criminal revision, jail appeal, or any other case not provided for shall, unless otherwise ordered, consist of High Court papers and such papers on the record of the court or courts below as may be necessary:

Provided that a typewritten paper-book shall, subject to any orders passed by the Chief Justice, be prepared in a case which may be heard by a Division Bench. Copies of legibly written papers may be prepared by photocopying in the paper- book.

Where the copy of the judgment included in High Court papers is not in English or in the language of the State, a translation of such judgment in English shall also be included in the paper book.

**26. Paper-book in a contempt of court case:-**

In a case of contempt of court, copies to be included in the paper-book, shall, as nearly as may be, consist of the following papers, namely--

- (i) application or report or order with relevant annexures, if any, upon which notice was issued; and
- (ii) copies of the following papers shall be added to the paper-book from time to time as occasion arises, namely--
  - (i) an affidavit filed in the case;
  - (ii) orders passed by the Court.

**27. Paper-book in a reference under Section 318 of the Code of Criminal Procedure, 1973:-**

In a reference under Section 318 of the Code of Criminal Procedure, 1973, the paper-book shall, as nearly as may be, be as in the case of criminal appeal.

**28. Preparation of paper-book:-**

In all cases in which a sentence of death has been passed or notice has been given to the accused to show cause why his sentence should not be enhanced and the offence is one in which a sentence of death may be passed or appeals under Section 374 (2) or under sub-section (1) or (2) of Section 378 of the Code of Criminal Procedure, 1973], a printed paper-book shall be prepared. In appeals under sub-section (4) of Section 78 of the Code of Criminal Procedure, 1973 and in cases covered by Rules 25, 26, 29 and 30 a typed written paper-book shall be prepared.

Copies of legibly written papers may be prepared by photocopying in the paper-book.

Where a reference has been made by the Court of Session under Section 366 of the Code of Criminal Procedure, 1973, for the confirmation of the sentence of death passed by him and an appeal has also been presented by a person convicted in the same case, a single printed paper-book shall be prepared:

Provided that no paper-book shall be prepared in a case which may be heard by a Judge sitting alone unless specifically directed by the court.

**29. Arrangement of papers in parts:-**

Except in cases covered by Rule 28, before preparing a typewritten or printed paper-book the office shall remove from the records of the case the papers indicated below and arrange them as nearly as may be, in three parts:

Part I shall consist of High Court papers.

Part II shall consist of papers mentioned under heads (A), (B) and (C) of Rule 23 or under Rule 24.

Part III shall consist of the following papers, namely--

- (i) police charge-sheet;
- (ii) commitment order;
- (iii) calendar;
- (iv) opinions of assessors; and
- (v) exhibits other than those included in Part II arranged in the order of their exhibit numbers.

**30. Number of printed copies of paper-book:-**

Where a printed paper-book is prepared under these Rules twenty-two copies thereof shall be printed, ten being reserved for the use of the Court.

The Registrar (Judicial) may, where necessary, direct a larger number of copies to be printed.

**31. Number of copies of paper-book:-**

(1) Where a paper-book is required, two copies thereof shall be prepared in a case which may be heard by a Judge sitting alone and three in other cases, one copy being given in either case to the Government Advocate for his use.

(2) The Advocate for the parties may, except in a case of contempt of court, apply for the preparation of as many copies of such paper-book as may be required for their use on payment at such rates as may be fixed by the Chief Justice from time to time. Such copies may be supplied if the Registrar (Judicial) can conveniently arrange to have them prepared by the office. No application for such copies shall be considered if made after the lapse of thirty days from the date on which the appeal is admitted or in the case of a reference under Section 318 of the Code of Criminal Procedure, 1973, after the lapse of thirty days from the date on which such reference is received by the Court, or in a case in which notice has been given to the accused to show cause why his sentence should not be enhanced, after the lapse of thirty days from the date on which such notice is served :

Provided that the Registrar (Judicial) may in his discretion allow an application for copy or copies of such paper book to be made even after the expiry of thirty days as enjoined in the Rules if he is satisfied that the record or manuscript of the paper-book has not been sent for typing or printing.

(3) Before an application for preparation of a copy or copies of the paper-book is presented under sub-rule (2) a sum of Rs. 50 for every such copy shall be deposited with the Court, who shall make an entry on the application indicating that such deposit has been made. If the amount so deposited be found to be less than the actual cost of the

paper-book the Advocate concerned shall pay the balance of the time of taking the paper book and if this amount is in excess of the actual cost of the paper book an unstamped application for refund of such excess may be presented to the Deputy Registrar after the amount of such cost has been ascertained. In the event of the paper book not being taken the amount of the deposit shall stand forfeited to Government after the case has been decided.

### **32. Material exhibits:-**

When the record of a sessions case has been received in an appeal or reference under Section 366 of the Code of Criminal Procedure, 1973 and there are material exhibits in the case, the office shall see whether the Judge has recorded an order regarding such exhibits and whether the exhibits required by such order to be submitted to the High Court have been received. Any defect shall immediately be brought to the notice of the Sessions Judge.

Where there are material exhibits in the case and no order as indicated above has been recorded by the Judge, his attention shall immediately be drawn to such omission and he shall be asked to state what material exhibits are fit for submission to the High Court and in case they have not already been forwarded to the Court to submit them without delay.

### **33. Custody of material exhibits:-**

All material exhibits received in a case shall be examined by and kept under the charge of the clerk concerned. He shall enter them in the appropriate register showing the number of the case in which and the district from which each exhibit has been received. He shall see that all such exhibits are in accordance with the list, if any, on the record of the case. Where no such list exists, he shall himself prepare one in duplicate and have it checked and signed by the Section Officer. The duplicate copy



of such list shall be sent to the Court from which the exhibits have been received, the original being placed on the record of the case.

Any discrepancy in the number or condition of exhibits shall immediately be brought to the notice of the Registrar (Judicial).

All valuable exhibits consisting of ornaments, cash or currency notes shall be kept in an iron safe the key of which shall remain with the Registrar General or such officer as he may nominate. All exhibits shall be kept in a locked room.

**34. Application or petition by post:-**

The officer-in-charge of a jail may forward an application or petition presented to him by a prisoner confined in the jail to the High Court by post. Any other application or petition received by post shall be returned for presentation either in person or through an Advocate or where the prisoner is confined in a jail through the officer-in-charge of the jail concerned.

**35. Recommendation for mercy:-**

In a case in which the Court makes a recommendation to the State Government for the exercise of the prerogative of mercy, a copy of the Court's judgment together with a copy of the judgment of the Court below shall be forwarded to the State Government along with a letter setting out the recommendation. Where a printed paper- book has been prepared, a copy of such paper book shall also be forwarded along with the letter.

**36. Signing of notices etc.:-**

All notices, summonses, and warrants issued by the Court in criminal cases shall be signed by the Registrar (Judicial) or the Deputy Registrar (Judicial).

**37. Registrar (Judicial) to sign complaint under Chapter XXVI of the Code of Criminal Procedure, 1973:-**

Where an order has been passed under Chapter XXVI of the Code of Criminal Procedure, 1973, that a complaint be made, such complaint shall be drawn up and signed by the Registrar (Judicial) after it has been approved by the Judge or Judges passing an order.

**38. List of ready cases:-**

A list of cases ready for hearing shall be prepared from time to time and posted on the notice-board.

**39. Adjournment on request by Government Advocate:-**

In special cases if the Government Advocate is not ready or needs instruction from the district magistrate or some other authority or requires the attendance of some officer to instruct him at the time of hearing, he may apply to the Registrar (Judicial) that the case may not be listed for a specified period or that a particular date be fixed for hearing.

The Registrar (Judicial) may thereafter fix a date after consulting the Advocate for the other party.

**40. Issue of order after decision:-**

(1) Where a sentence of death has been confirmed or passed by the court, an order in the prescribed form shall be issued immediately to the Court concerned. In a case in which a sentence has been set aside or a conviction has been reversed or there has been reduction or alteration in the nature of the sentence or an accused who is on bail has been ordered to surrender to his bail on the decision of the case, a copy of the relevant entry in the order sheet shall be issued immediately to the court concerned:

Provided that in any case in which the accused is in jail and his conviction has been reversed and/or sentence of imprisonment has been set aside or reduced to the period already undergone or altered into one of fine only, a copy of the relevant entry in the order-sheet together with a release order under the signature of the Deputy Registrar (Judicial) and the seal of the Court shall be sent to the Superintendent or the Officer-in-

charge of the jail in which the accused is in confinement directing him to release the accused, if not required in any other case, and the fact of such release shall be communicated to the trial Court as early as possible:

Provided further that when a release order is issued to a jail outside the district, the Deputy Registrar (Judicial) shall simultaneously give an intimation about its dispatch by radiogram to the Superintendent or the Officer-in-charge of the jail concerned.

A copy of the judgment shall in every such case be certified to the Court concerned in due course.

(2) In other cases, an order in the appropriate form shall be issued to the court concerned as soon as the judgment or order of the court has been received in the office and shall be accompanied by a copy of such judgment or order.

**41. Copy of judgment to be sent to magistrate:-**

Where in a case decided by the Court the proceedings of a magistrate were under consideration an additional copy of the judgment shall be sent to the Sessions Judge for being forwarded to the magistrate concerned through the Chief Judicial Magistrate, or District Magistrate, as the case may be.

**42. Copy of paper-books to be forwarded to Government in case of sentence of death:-**

In a case in which a sentence of death has been confirmed or passed by the Court or where a sentence has been enhanced to one of death two copies of the printed paper-book along with two copies of the Court's judgment shall be forwarded to the State Government. Where no printed paper-book has been prepared, the original paper-book containing the proceedings of the Court below shall be forwarded along with two copies of the Court's judgment to the State Government with a

request that the original paper-book be returned when no longer required.

#### **43. Printing of record.**

On receipt of the proceedings under Section 366 of the Code of Criminal Procedure from the Sessions Court, the Registrar shall take immediate steps to have the record printed under the rules next following.

The printed record in Murder Reference Cases shall consist of the following documents:-

- (1) An opening sheet of Sessions record.
- (2) Notes and Orders of the Sessions Judge
- (3) Charge Sheet framed by the Sessions Judge
- (4) Plea of the accused.
- (5) Reports of the Chemical Examiner and the Serologist, if any.
- (6) First Information Report.
- (7) Inquest Report.
- (8) Material documentary evidence, if any.
- (9) Record of evidence in Court of Session.
- (10) Statements and confessions recorded under Section 164 of the Code of Criminal Procedure.
- (11) Examination of the accused in Sessions Court under Section 313 of the Code of Criminal Procedure.
- (12) Judgment of Sessions Judge
- (13) Petition of Appeal

#### **44. Copies of the record.**

Fourteen copies of the Sessions record shall be printed at Government expense with the least possible delay if there is only one

accused, but in case the number of the accused exceeds one, an extra copy shall be printed for each additional accused.

**45. Defence counsel at Government expense.**

In a case where the Sessions Judge certifies that the accused person cannot afford to engage counsel for his defence in the High Court, the Registrar (Judicial) shall take steps to have counsel engaged for his defense at Government expense.

**46. Time limit for hearing Murder Reference.**

The hearing of the Murder Reference, in view of the provisions of Section 366 of the Code of Criminal Procedure, which lay down that a sentence of death shall not be executed unless it is confirmed by the High Court, shall take place as a rule within about six weeks after the date of receipt of records in the High Court.

**47. Information of decision to accused.**

Immediately on the sentence of death being confirmed or not confirmed, as the case may be, by the High Court, the Registrar shall inform the Superintendent of the jail in which the prisoner is confined of the decision and direct him to communicate the same to the prisoner forthwith. The Registrar shall, at the same time, inform the Sessions Judge concerned and return the records to him for taking steps under section 473 of the Criminal Procedure Code. Copies of the High Court Judgment shall be sent to that officer later, and as promptly as possible.

**48. Record to be sent to Government.**

The record of every case as prepared for the use of the High Court in which the sentence of death has been confirmed by the High Court, together with a copy of the High Court judgment and translations of Police Zimnis, shall, as soon as orders have been passed confirming the death sentence, be forwarded to the State Government.

**49. Record to be sent to Government.**

The copies of record received under Section 366 Cr.P.C. shall be compared with the original record and if necessary corrected in the High Court by such officials of this Court as may be nominated for the purpose by the Registrar (Judicial) before being placed before a Criminal Bench. The officials responsible for comparison and correction of the copies of record shall attest the same to be true copies of the original.

## CHAPTER 14

### APPEALS TO THE SUPREME COURT

#### SECTION 'A'-CASES OTHER THAN CRIMINAL CASES

##### 1. Title of petition:-

A petition for a certificate of fitness to appeal to the Supreme Court of India shall be entitled:

In the High Court of Himachal Pradesh at Shimla

Petition for Certificate under Article . . . ( ) of the Constitution of India.

Supreme Court Petition No . . . of . . .

##### 2. Contents of petition:-

The petition shall contain a brief statement of the case and the grounds of appeal.

In a case falling under Article 133 (1) of the Constitution, it shall clearly state how it fulfills the requirements thereof.

In a case falling under Article 132 (1) of the Constitution, it shall state how a substantial question of law as to the interpretation of the constitution is involved.

In a case falling under Article 135 of the Constitution, it shall state how appeal lies to the Supreme Court.

##### 3. Copies:-

The petition shall be accompanied by a certified copy of the judgment or final order in respect of which the certificate is sought and a certificate of the counsel that the array of parties is the same as in the case giving rise to the petition and that the Vakalatnama has already been filed.

This copy shall be for the use of the Court in addition to the copies filed in accordance with the Rules.

#### **4. Limitation:-**

Article 132 of the Schedule of Limitation Act, 1963, shall, subject to the provision of any law for the time being in force, also apply to a petition for a certificate under Articles 132 (1), 133 (1) or 135 of the Constitution.

#### **5. Notices:-**

(1) In connection with a Supreme Court appeal, the following notices shall be issued, namely--

- (a) notice of petition for a certificate
- (b) notice of judgment of the petition of appeal in the Supreme Court;
- (c) notice for deposit of the cost of transmission of record; and
- (d) notice of dispatch of record to the Supreme Court.

No other notice shall be necessary unless expressly provided for in these rules or ordered by the Court.

(2) Service of notice upon the Advocate on Record of the Appellant in the Supreme Court shall be deemed sufficient service under this Chapter. In other cases, where a party had appeared by an Advocate service of notice on such Advocate shall be deemed to be sufficient service.

(3) No process fee shall be levied in the case of a notice under Clauses (b), (c) or (d) of sub-rule (1) where it may be served upon an Advocate.

#### **6. Presentation of a petition for certificate: -**



The petition shall be presented before the Registrar (Judicial). Where the Registrar (Judicial) finds that the petition is in order, has been presented within time and is accompanied by the requisite papers, he may direct notice of petition for grant of a certificate to be issued.

**7. Removal of defects:-**

Where the Registrar (Judicial) finds that the petition is not in order or is not accompanied by the requisite papers, he may either return it or may, subject to the provisions of these rules or any other law, receive it granting time for removal of the defect; provided that the time to be so granted shall not exceed the period prescribed by the Limitation Act, 1963 for such petitions. In other cases, he shall lay the case before the Court for orders.

**8. Hearing of petition:-**

Soon after the notice of petition has been served on the opposite party, the petition shall be listed before the Bench for final hearing.

**9. Disposal of petition:-**

Such applications shall be heard and disposed of by a Judge sitting alone where leave is sought from judgment, final order or decree passed by a single Judge and, in other cases, by a Division Bench. As far as possible such applications shall be laid before the single Judge or Bench which passed the judgment, or final order or decree.

**10. Service of notice of lodgment of petition:-**

On receipt from the Supreme Court of the copy of the petition or appeal:-

- (a) a notice of lodgment of the petition of appeal shall be served on the respondent and as soon as the notice is served a certificate as to date or dates on which the said notice was served shall be sent to the Supreme Court.

**(b) Cost of transmission of record and balance to be refunded on an application:-**

Unless otherwise ordered by the Supreme Court, a notice shall issue to the appellant requiring him to deposit within a week from the date of service of this notice a sum of rupees ten on account of costs of transmission of record to the Supreme Court provided that, after meeting the cost of transmission of the record of the Court below as well as this Court, the balance, if any, shall be refunded to the appellant, on an application in this behalf being made by him.

**Default to be reported to Supreme Court:-**

Any default on the part of the appellant to deposit the amount to cover the cost of transmission of the record as above shall be reported to the Supreme Court for orders; and

**(c) Summoning of record:** - The record and proceedings of the case shall be summoned from the Court below, if the same are not already in the High Court.

**(i) Filing of list of documents: -**

On receipt of the records, a notice shall issue to the appellant calling upon him to file, within four weeks of the service upon him of the said notice a list of documents which he proposes to include in the paper book, after serving a copy thereof on each of the respondents. The appellant shall produce an acknowledgment in writing from each of the respondents that a copy of the list has been served on him.

**(ii) Contents of notice to respondent:-**

The notice to the respondent under sub-rule (a) of Rule 10 shall also intimate to him the fact that a notice has already been issued to the appellant for filing the list of documents, and requiring him (the respondent) to file, within three weeks from the service of a copy of the

list on him by the appellant, a list of such additional documents as he desires to be included in the paper book.

**11. (i) Inclusion of records:-**

Where the decision of the appeal is likely to turn exclusively on a question of law, the appellant may apply for inclusion of such parts only of the record as may be necessary for the discussion of the same.

**(ii) List to accompany application.-**

The application mentioned in sub-rule (i) shall in a case in which a printed record has already been prepared for the use of this Court, be accompanied by;

a list of documents already printed but considered as not relevant to the subject-matter of the appeal;

a list of documents printed on behalf of the opposite party and included in the list under Clause (i); and

a list of documents not already printed but the printing of which is considered essential for the prosecution of the appeal, a short note being entered against each document in the list showing in what respect its inclusion is essential.

The petitioner shall serve copies of these lists on the Advocate for the opposite party.

**12. Settling of index.-**

After the expiry of the time fixed for the list of additional documents by the respondent, the case shall be listed before the Registrar (Judicial) for the settlement of the list (hereinafter referred to as the Index) of documents to be included in the transcript of the record of appeal and shall notify the same on the notice board of the Court. No separate notices will be issued to the parties or their Advocates. In settling the index, the Registrar (Judicial), as well as the parties concerned, shall endeavor to exclude from the record all

documents that are not relevant to the subject-matter of the appeal and generally to reduce the bulk of the record as far as practicable.

**13. Procedure where respondent objects to inclusion of document:-**

Where the respondent objects to the inclusion of a document on the ground that it is not necessary or is irrelevant and the appellant nevertheless insists upon its inclusion, the transcript of the record as finally prepared shall, with a view to subsequent adjustment of costs of or incidental to the printing of the said document, indicate in the index of the transcript or otherwise the fact that the respondent has objected to the inclusion of the document and that it has been included at the expense of the appellant.

**14. Procedure where appellant objects to inclusion of documents:-**

Where the appellant objects to the inclusion of a document on the ground that it is not necessary or is irrelevant and the respondent nevertheless insists upon its inclusion, the Registrar (Judicial), if he is of the opinion that the document is not relevant, may direct that the said document be included separately at the expense of the respondent and require the respondent to deposit within such time as he may prescribe the necessary charges thereof. If the amount so deposited is found insufficient the Registrar (Judicial) may call upon the respondent to deposit additional amount or amounts within such further time as he may deem necessary. The question of the costs thereof will be dealt with by the Supreme Court at the time of the determination of the appeal.

**15. Estimate of costs of the preparation of the transcript of record, etc.:-**

As soon as the index of the record is settled, the Registrar (Judicial) shall cause an estimate of the costs of the preparation of the

transcript of the record (and of printing or cyclostyling the record, where it is required to be printed or cyclostyled) to be prepared and served on the appellant and shall require him to deposit within thirty days of such service the said amount. Such costs shall include the costs of translation if any. The appellant may deposit the said amount in a lump sum or in such installments as the Registrar (Judicial) may prescribe.

**16. Where the record is printed for High Court appeal, no fresh transcript necessary: -**

Where the record has been printed for the purpose of the appeal before the High Court and a sufficient number of copies of the said printed record is available, no fresh transcript of the record shall be necessary except such additional papers as may be required.

**17. Registrar (Judicial) may call for additional deposit made is insufficient:-**

If at any time during the preparation of the transcript of the record (or printing or cyclostyling of the record, where it is required to be printed or cyclostyled) the amount deposited is found insufficient, the Registrar (Judicial) shall call upon the appellant to deposit such further sum as may be necessary within such further time as may be deemed fit but not exceeding eight days in the aggregate.

**18. Procedure on appellant making default in making deposit:-**

Where the appellant fails to make the required deposit, the preparation of the transcript of the record (and the printing or the cyclostyling of the record, where the same is required to be printed or cyclostyled) shall be suspended and the Registrar (Judicial) shall not proceed therewith without an order in this behalf of the Supreme Court.

**19. (i) Record not to be printed unless ordered by the Supreme Court:-**

Unless the Supreme Court so directs the record shall not be printed or cyclostyled in this court.

**(ii) Rules regarding printing and cyclostyling: -**

Where the Supreme Court directs that the record be printed or cyclostyled in this court the same shall be printed or cyclostyled in accordance with the rules in the First Schedule to the Supreme Court Rules, 1966.

**(iii) Record may be cyclostyled if consisting less than 200 pages:-**

Where the appeal paper-book is not likely to consist of more than 200 pages, the Registrar (Judicial) may, instead of having the record printed, have it cyclostyled.

**(iv) Number of copies for the use of the Supreme Court:-**

Unless otherwise directed by the Supreme Court, at least 20 copies of the record shall be prepared for the use of the Supreme Court.

**(v) Number of copies for the parties:-**

Unless party informs its requirements before the printing or the cyclostyling is undertaken, each party shall be entitled to three copies of the record for its use.

**20. Translation of papers: -**

All documents included in the list which are not in English and are not already translated shall be translated into English. All such translations shall be made or certified as correct by one of the court translators.

**21. (i) Transcript of the record to be transmitted to Supreme Court within six months:-**

The Registrar General shall, within six months from the date of the service on the respondent of the notice of the petition of appeal, transmit to the Supreme Court in triplicate a transcript in English of High Court of Himachal Pradesh Appellate Side Rules, 2018

their record proper of the appeal to be laid before the Supreme Court, one copy of which shall be duly authenticated by appending to certificate to the same under his signature and the seal of this High Court. If for reason the same cannot be transmitted within the period of six months mentioned above, the Registrar-General shall report the facts to the Supreme Court and obtain a necessary extension of time for transmitting the same.

**(ii) Certificate of expense to be appended to the transcript or forwarded separately:-**

The Registrar (Judicial) shall also append to the transcript of the record or separately forward a certificate, showing the amount of expenses incurred by the parties concerned for the preparation and the transmission of the transcript of the record.

**22. Form of notice of transmission of the transcription to the parties:-**

When the transcript has been made ready, the Registrar (Judicial) shall certify the same and give notice to the parties of the certification and the transmission of the transcript of the record (or of the printed or cyclostyled record, where it is required to be printed or cyclostyled record) and thereafter shall send a certificate to the Supreme Court as to the date or dates on which the notice has been served on the parties.

**23. Procedure regarding investigation of pauperism of applicants to Supreme Court:-**

When an order of the Supreme Court directing investigating into the pauperism of an appellant is received, it shall be laid before the court for orders as to whether the necessary inquiry in the matter is to be made by the Court itself or by a subordinate court. In the latter case, the court shall while forwarding the findings of the subordinate court to the Supreme Court record its own opinion therein.

**24. Notice to appellant where special leave granted by the Supreme Court:-**

As soon as a certified copy of the order of the Supreme Court granting special leave to appeal has been received by the Court, the Registrar (Judicial) shall give immediate notice thereof to the appellant.

**25. Application of Rules in this Chapter and Order XLV of the Code to cases in which special leave has been granted:-**

Subject to such special directions as may be given by the Supreme Court the provisions of the rules contained in this Chapter and Order XLV of the Code of Civil Procedure shall, so far as may be and with such modifications and adaptations as may be found necessary apply to a case in which special leave to appeal has been granted by the Supreme Court.

**26. Suits on death of party by or against minor:-**

Where any party to the petition dies before the certificate is granted the provisions contained in Rules 1 to 6 and 9 of Order XXII and Order XXXII of the Code shall, so far as may be and with necessary modifications and adaptations, apply.

**27. Taking of evidence in case of dispute as to legal representative:-**

Where it becomes necessary to take evidence in order to determine whether any person is or is not proper person to be substituted, or entered, on the record in place of, or in addition to, the party on record, the court may either take such evidence itself or direct any lower court to take such evidence and to return it together with its findings and reasons and take such findings and reasons into consideration in determining the questions.

**SECTION 'B'- CRIMINAL CASES**



**28. Applications for a certificate under Art. 132 (1) or Art. 134 (1) (c) of the Constitution:-**

An application for a certificate under Art. 132 (1) or 134 (1) (c) of the Constitution in criminal proceedings shall be made in writing, stating the grounds on which the leave is sought, within sixty days from the date of the judgment, final order or sentence passed by the court. The provisions of Secs. 4 and 5 of the Limitation Act, 1953 shall apply to such an application and the remaining provisions shall not apply.

In computing the period of limitation prescribed in the preceding paragraph, the time requisite for obtaining a copy of the judgment, final order or sentence passed by the court shall be excluded.

Such application shall be heard and disposed of by a Judge sitting alone where leave is sought from the judgment, final order or sentence passed by a single Judge and in other cases by a Division Bench. As far as possible such application shall be laid before the single Judge or Bench which passed the judgment, final order or the sentence:

Provided that where the applicant has been sentenced to a term of imprisonment the application shall not be entertained until the applicant has surrendered and in proof thereof has filed a certificate either of the Magistrate before whom he has surrendered or of the Superintendent of Jailer of the Jail in which he has been lodged unless the court on a written application for that purpose orders otherwise. Where the application for a certificate is accompanied by such an application both the applications shall be listed together before the court.

**29. Intimation of application to Sessions Judge:-**

As soon as an application for grant of a certificate under Art. 134 of the Constitution of India from or on behalf of the condemned

prisoner is received the fact shall be notified to the Sessions Judge concerned to enable him to defer execution of the sentence of death. Intimation will again be sent to the Sessions Judge when the application is finally disposed of.

**30. Appeal to Supreme Court on cases covered under Sec. 426, Cr.P.C:-**

(1) On the applicants executing a bond with or without sureties undertaking to lodge an appeal in the Supreme Court within prescribed time, the Court may--

- (1) in a case covered by Section 426 (2-A) of the Code of Criminal Procedure order that the appellant be released on bail for a period sufficient in the opinion of the court to enable him to present the appeal and obtain the order, of the Supreme Court under Section 426(1);
- (2) in cases under Section 426(2-B) order that pending the appeal, the sentence or order appealed against be suspended and also if the applicant is in confinement, that he be released on bail;

Provided that a person applying under Section 426 (2-B) shall make an averment to the effect that he has not made a similar application to the Supreme Court.

- (2) No application for bail or suspension of sentence or order shall be entertained unless the applicant has surrendered himself in court and has noted the fact in his application.
- (3) Where the application is by the State, no such bond shall be required before an order under this rule is made.
- (4) A certified copy of the order under Section 426 (2-B) granting bail on suspending the operation of the sentence or order appealed against shall be transmitted to the Registrar, Supreme Court without delay.

**31. Preparation and upkeep of transcribed records:-**

After the appeal has been lodged in the Supreme Court and copy of the petition of appeal has been received from the Registrar General of that court, the Registrar-General shall, with all convenience spend, cause a transcript of the record to be prepared keeping in view the period within which copies of the record are required to be dispatched to the Supreme Court in cases falling under Art. 134 (1) (a) and (b) of the Constitution.

**32. Notice of dispatch of record:-**

As soon as the requisite number of copies of the transcript and the record have been dispatched to the Supreme Court, the Registrar (Judicial) shall give notice thereof to the parties.

**33. Application of certain rules in Section 'A':-**

Rules 3, 5, 19 and 20 of Section 'A' shall with such modifications and adaptations as may be found necessary, also apply to appeals to the Supreme Court in criminal matters.

**SECTION 'C'-SUPREME COURT DECREES****34. Enforcement of Supreme Court decrees: -**

The enforcement of decrees passed or decrees made by the Supreme Court shall be made in accordance with the provisions contained in the Supreme Court (Decree and Orders) Enforcement Order, 1934.

## CHAPTER 15

RULES MADE BY THE HIGH COURT OF HIMACHAL PRADESH AND TO REGULATE THE PROCEDURE IN CASE OF APPLICATIONS TO SET ASIDE ORDERS OF FORFEITURE PASSED BY THE STATE GOVERNMENT UNDER SECTION 95(1) OF THE CODE, IN EXERCISE OF THE POWERS CONFERRED BY ARTICLE 225 OF THE CONSTITUTION AND ALL OTHER POWERS ENABLING IT IN THIS BEHALF.

### 1. **Application to be signed and verified.**

Every application to the High Court, under Section 96(1) of the Code of Criminal Procedure, 1973 to set aside an order of forfeiture under section 95(1) of the Code shall be made by the presentation of a petition which shall be signed by the applicant and verified at the foot by the affidavit of the applicant.

### 2. **Language paper and other essentials.**

The petition shall be written in the English language on foolscap paper or other paper similar to it in the size and quality, and divided into paragraphs, numbered-consecutively. Dates and sums occurring the petition shall be expressed in figures.

### 3. **Title**

The petition shall be headed:

“In the High Court of Himachal Pradesh at Shimla” and shall be instituted “In the matter of .....(name of description of book, document or newspaper as the case may be)”.

### 4. **Contents of petitions and exhibits to be annexed**

The petition shall state what the interest of the applicant is in the property in respect of which the order of forfeiture has been made and all documents or copies thereof in proof of such interest together with a copy of the notice of forfeiture under section 95 of the Code of Criminal Procedure, 1973 shall be annexed as exhibits to the petition.

5. **Grounds to be stated.**

The petition shall state the ground or grounds on which it is sought to be set aside the order of forfeiture.

6. **Deposits of printing charges.**

The applicant shall, with his petition, attach a receipt for a deposit of Rs. 100/- to cover the cost of printing the record.

7. **Translation of vernacular documents.**

All vernacular documents annexed as exhibits to the petition and all vernacular documents relied on by the applicant and intended to be in evidence shall be translated into English by an official translator or translators.

8. **Presentation of petition and constitution of a special Bench for the hearing.**

The petition with exhibits annexed thereto and their translations, if any, together with a copy of such petition and exhibits with translations shall be presented to the Deputy Registrar (Judicial), who will lay the same before the Chief Justice. The Chief Justice will then constitute a Special Bench composed of three Judges as required by Section 96(2) of the Criminal Procedure code and appoint a day for the hearing and determination of the application.

9. **Notice to produce the document on which forfeiture was ordered.**

The Deputy Registrar (Judicial) shall forthwith give notice of the filing of the application to the Advocate-General of the State concerned and shall request him to obtain from Government and to furnish to the Court, as soon as possible, a copy of the particular newspaper, book or other document containing the words signs or visible representations on which the declaration of forfeiture was based.

10. **Evidence by affidavits.**

Evidence in support of or against the petition shall be in the form of affidavits. The Advocate General shall, within fifteen days of the receipt of the notice mentioned in Rule 9, file affidavit on behalf of the State and supply copies thereof to the other side. The applicant shall, within fifteen days of the receipt of copies of the affidavits, file his affidavits and likewise supply the Advocate General with copies.

**11. Date of hearing to be notified to Government.**

Notice in writing of the day appointed for the hearing and determination of the application shall be given by the Deputy Registrar (Judicial) to the Chief Secretary to Government of Himachal Pradesh as the case may be, and the copy of the petition and exhibits with translations, if any, mentioned in Rule 8 shall accompany such notice.

**12. Printed paper book to be prepared a week before the date of hearing.**

A printed paper-book shall be prepared and completed under the orders of the Deputy Registrar (Judicial) at least one week before the day fixed for hearing and determination of the application.

**13. Thirty copies of the paper book to be prepared.**

There shall ordinarily be printed 30 copies the paper-book, but the Deputy Registrar (Judicial) may, when necessary direct a larger number to be printed.

**14. Contents of a paper book.**

In the absence of a special order, the printed paper-book shall ordinarily contain:-

- (1) the declaration of forfeiture in respect of which the application is made;
- (2) the application and the affidavit of the applicant;
- (3) the exhibits annexed to the application or their translation;

(4) the affidavits filed under Rule 10 and a reprint of such portions of the prescribed publications (translated into English, if in vernacular in accordance with rule 7 to be indicated by the parties within 15 days of the receipt of the notice which will be issued by the Deputy Registrar (Judicial) to the applicant, or his counsel, if any, and the Advocate General.

Note: The cost of printing (1), (2) and (3) will be met by the applicant out of the deposit made under rule 6 and the cost of (4) will be borne by the party concerned.

**15. Recovery of additional cost of printing.**

If the deposit required under Rule 6 proves insufficient to cover the cost of the printed paper book, the Deputy Registrar (Judicial) may, by a notice in writing, require that such further deposit, as seems to him necessary, shall be made within one week.

**16. Action to be taken on failure to deposit additional cost.**

If such further deposit be not made within the time specified in the notice, the application shall be placed before a Special Bench the composed of three Judges which will either dismiss the application or pass such other orders as may be suitable.

**17. Supply of copies of paper book to parties before date of hearing**

The applicant and his counsel and the Advocate General shall be entitled to receive copies of the printed record on application to the Deputy Registrar one week before the date fixed for the hearing.

**18. Printing charges to be included in costs.**

At the foot of every printed book shall be noted the amount of the printing and incidental charges and the person from whom levied, and such amount shall be included in the costs of the proceedings unless the Court shall otherwise direct.

**19. Taxation of costs.**

The table of fees now in force in this Court shall be applicable to all applications under Section 96(1) of the Code of Criminal Procedure and proceedings thereon and costs payable in respect of such applications and proceedings shall be taxed, when so directed by the Taxing Officer of this Court.

20. **Execution of orders passed.**

The provisions of the Code of Civil Procedure and the Rules and Orders relating to the execution of decrees shall be applicable to the execution of orders passed by the High Court on applications under Section 96 (1) of the Code of Criminal Procedure.



## CHAPTER 16

### **RULES UNDER SECTION 110 OF THE TRADE AND MERCHANDISE MARKS ACT, 1958 No. 43 of 1958).**

In exercise of the powers conferred by Section 110 of the Trade and Merchandise Marks Act, 1958 (No. 43 of 1958), the High Court of Himachal Pradesh has made the following rules:-

#### **1. Definitions.**

In these rules:-

- (a) The Act means the Trade and Merchandise Marks Act, 1958.
- (b). “Court” means High Court of Himachal Pradesh.
- (c). “The Deputy Registrar” means the Deputy Registrar (Judicial ) of the High Court of Himachal Pradesh and includes any person performing the functions of Deputy Registrar (Judicial) for the time being.
- (d) “Judge” means a Judge of the High Court of Himachal Pradesh.
- (e) The “Registrar” means the Registrar of Trade Marks referred to in Section 4 of the Act and includes any officer appointed under Sub-section (2) of Section 4 of the Act to discharge any of the functions of the Registrar.

#### **2. Title of application.**

All applications and appeals under this Act shall be instituted in the matter of the Act and in the matter of the Trade and Merchandise Marks to which they relate.

#### **3. Mode of application: -**

All applications and appeals under the Act shall be made by petition supported by an affidavit and shall be presented to the Registrar (Judicial).

If the Registrar (Judicial) finds the application or appeal to be in order, he shall direct it to be placed before the Court for orders on the next working day.

4. **Disposal by court at first hearing:-**

The Court may either admit the application or appeal so placed before it or reject summarily or make such order as the circumstances of the case may require.

5. **Service on the Registrar of Trade Marks:-**

Notice of all applications or 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.

6. (a) **State of pending suit or proceedings.**

If any application or appeal is made to the High Court, under the Act and any suit or other proceedings concerning the Trade and Merchandise Marks in questions pending before the High Court or any District Court, the High Court may stay such suit or proceeding until the disposal of the said application or appeal.

(b). **Record of the case in appeal.**

In all contested appeals from the decisions of the Registrar the petitioner and the respondent shall furnish to each other, within 2 weeks from the date of the filing of the affidavit in reply, a list of documents forming part of the record of the case before the Registrar on which they rely for the purposes of the hearing of the appeal. The petitioner shall then prepare a duly indexed compilation of the documents relied upon by either side and furnish a copy of the same to the Court and to the opposite party within thirty days of the receipt of the list of documents from the opposite party.

7. **Reference under section 107(2)**

Where the Registrar makes a Reference to the court under Section 107(2) of the Act, he shall give notice of the same to the parties concerned. He shall also supply the Deputy Registrar, the postal addresses of all persons interested in the Reference. After the Reference is received, the Deputy Registrar shall fix a date for the hearing of the same and put it on the list of the Judge on such date for disposal. Fifteen days' notice of the day so fixed shall be given by the Deputy Registrar to the Registrar and to the parties concerned by sending the notice by registered post.

**8. Procedure for withdrawal of an application under section 109(7)**

Where under section 109(7) of the Act an applicant becomes entitled and intends to withdraw his application, he shall give notice of the intention in writing to the Registrar and to the other parties, if any, to the appeal within one month after the leave referred to in that section has been obtained. He shall also give notice to the Deputy Registrar (Judicial) who shall thereupon forthwith place the appeal on the list for disposal.

**9. Counter-claim for notification of Registrar in a suit for infringement.**

A defendant in a suit for infringement filed in the High Court may in regard to any registered trademark in issue counter-claim for the rectification of the register and shall within the time limited for the delivery of the counter-claim serve the Registrar with the same, and the Registrar shall be entitled to take such part in the suit as he may think fit without delivering a defence or other pleading.

**10. Copy of Judgment and other to be sent to the Registrar.**

A certified copy of every judgment and order made on any application, appeal or reference under the Act shall be sent by the Deputy Registrar to the Registrar.

**11. Notice how to be given.**

Unless otherwise provided by these rules, when notice is required to be given to a party by the Act or by these rules, it shall be served on such party in the manner provided for the service of summons in a suit.

**12. Affidavits as evidence.**

Affidavits shall be treated as evidence of the acts affirmed in them.

**13. Application of the Code of Civil Rules of the Court.**

In case not provided or in the foregoing Rules, the provisions of the Code of Civil Procedure, 1908 and the Rules and Forms of the Court, shall apply mutatis mutandis to the proceedings under the Act:

Provided that it shall not be necessary for the Court to frame issues and the evidence may be taken in the form of affidavits where the Judge so directs.

**14. Disposal of cases.**

Applications relating to infringement of trademarks and the passing of actions under the Act and all references, appeals, etc. shall be brought to hearing as early as may be practicable.

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## CHAPTER 17

### THE COPYRIGHT RULES, 1959.

In exercise of the powers conferred by Section 73 of the Copyright Act, 1957 (Act No. 14 of 1957), the High Court of Himachal Pradesh makes the following rules:-

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

These rules may be called the Copyright Rules, 1959.

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

In these rules, unless there is anything repugnant in the subject for context:

- (i) 'The Act' means the Copyright Act, 1957 (No. 14 of 1957).
- (ii). 'Copyright Board' means the Copyright Board appointed under the Act.
- (iii) 'The Deputy Registrar means the Deputy Registrar (Judicial) for the High Court of Himachal Pradesh.
- (iv) 'The High Court' means the High Court for the State of Himachal Pradesh at Shimla.
- (v) 'The Registrar' means the Registrar of Copyright and includes the Deputy Registrar of Copyrights appointed under the Act;

#### 3. **Presentation of appeals.**

Subject to these rules, all appeals from a final decision or order of the Copyright Board shall be made to the High Court in accordance with the provisions of Chapter 6 of the Rules and Orders of the High Court of Himachal Pradesh (Appellate Side).

#### 4. **Disposal of appeals**

Appeals under rule 3 shall be heard and disposed of by a Bench of two Judges.

**5. Contents of appeals.**

Every memorandum of appeal under section 72 of the Act shall be drawn up in the manner prescribed by Order XLI, Rule 1 of the Code of Civil Procedure, and shall be presented to the Registrar accompanied by a certified copy of the final decision or order appealed from.

**6. Court fee**

Every Memo of appeal under section 72 of the Act shall bear court fees as provided in Article 11 of Schedule II of the Indian Court Fees Act.

**7. Register of appeal.**

There shall be kept a separate register for appeals from a final decision or order of the Copyright Board.

**8. Notice.**

Notice of appeal shall be in the form prescribed for notice issued in Regular First Appeals, with suitable modification, so as to make it clear that it is an appeal from a final decision or order of the Copyright Board.

**9. Contents of a paper book**

In all appeals admitted to a hearing printed record shall, unless special orders are given to the contrary, be prepared in accordance with the provisions of Chapter 10-A, High Court Rules and Orders, Volume V, which will apply mutatis mutandis save and except that the printed record shall be :

- (i) Petition of the application before the Board.
- (ii) A written statement of the petition of objection or reply as the case may be.
- (iii) Deposition of witnesses, if any.
- (iv) Copies of documents exhibited before the Board.
- (v) Copies of any documents rejected by the Board, where its rejection is a ground of appeal or cross-objections.

- (vi) Copy of the final decision or order of the Copyright Board.
- (vii) Copies of all affidavits and records used by the Board under section 74 of the Act.
- (viii) Such other document or documents as the Court may direct to be included.
- (ix) The grounds of appeal to the High Court in English.
- (x) The order of the Bench admitting the appeal.

**10.** The paper-book shall have an index. There shall be a printed paper book unless the Court otherwise directs.

**11. Specifying documents to be printed**

The Deputy Registrar (Judicial) shall as soon as an appeal is admitted, request the Copyright Board to transmit the record of the case to the High Court. Where and in so far as the record consists of an entry in a register kept by the Registrar of Copyrights or the Copyright Board, only a certified copy shall be transmitted.

Upon receiving the record, the Deputy Registrar (Judicial) shall cause notice to be given to the appellant and respondents, or their counsel, if any, to specify within 30 days of the date of receipt of notice the documents mentioned in rule 9 (V) above, which should be included in the printed record of the appeal. In default of their doing so, the printed record shall consist of the documents specified in Rule 9 (i) to (iv), (vi), (vii), (viii), (ix) and (x) only.

**12. Taxation of Costs.**

Taxation of costs shall be as in Regular First Appeals in Civil cases.

**13. Application of the Code of Civil Procedure and rules and forms of the Court.**

In cases not provided for in the foregoing rules and provisions of the Code of Civil Procedure, 1908, and the Rules and Forms of High Court of

Himachal Pradesh at Shimla shall apply mutatis mutandis to all proceedings under the Act.

14. **Table of fees applicable.**

Process fee shall be charged according to the scale notified by the High Court from time to time.



## CHAPTER 18

### THE CONTEMPT OF COURT HIMACHAL PRADESH RULES. 2018

#### PART-1

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

- (i) These rules may be called the 'Contempt of Court (Himachal Pradesh) Rules, 2018.
- (ii) They shall come into force on the date of their publication in Himachal Pradesh Rajpatra.

##### 2. **Definition**

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

- (a) " Act" means the Contempt of Courts Act, 1971 (No. 70 of 1971).
- (b) "Advocate General" means the Advocate General for the State of Himachal Pradesh.
- (c) "High Court" means the High Court of Himachal Pradesh.
- (d) "Judge" means a Judge or an Additional Judge of the Himachal Pradesh High Court or a Judge appointed thereto under Article 224-A of the Constitution of India.
- (e) "Registrar" means the Registrar of the High Court and includes the Registrar (vigilance), Registrar (Rules), Registrar (Judicial), Registrar (Administration), District and Sessions Judge (Leave/Training) Reserve or any other Officer exercising functions delegated to him under these Rules.
- (f) All other words and expressions used in these rules but not defined therein shall have the meaning respectively assigned to them in the Act.

#### PART-II COGNIZANCE AND PROCEDURE

##### A-GENERAL

**3. Registration of petition:-**

- (i) Every petition, reference or motion for taking proceedings under the Act, shall be registered as Civil Original Petition (Contempt) in respect of Civil Contempts and Criminal Original Petition (Contempts) in respect of Criminal contempt.
- (ii) In proceedings initiated by petition, the initiator shall be described as the “Petitioner” and the person charged with contempt as the “Respondent”.

**4. Nature of contempt to be indicated:-**

Every application, reference or motion for taking proceedings under the Contempt of Courts Act, 1971 shall mention at the head whether it relates to the Commission of ‘Civil Contempt’ or ‘Criminal Contempt’:

Provided that, if there are allegations both of commission of Civil Contempt and Criminal Contempt against the same person/persons, two separate applications shall be moved, one dealing with Civil Contempt and the other with Criminal Contempt.

**5. Facts to be stated in the motion or reference:-**

- (1) Every such motion or reference made under Section 15 (1) of the Act shall contain in precise language the statement setting forth the facts constituting the contempt of which the person charged is alleged to be guilty and shall specify the date or dates on which the contempt is alleged to have been committed. It shall also state the nature of the contempt and shall be supported by an affidavit if presented by an aggrieved party.
- (2) Every motion made by the Advocate General under sub-section (2) of Section 15 of the Act shall state the allegations of facts and the view of the informant that in relation to these facts contempt appears to have been committed of 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.

(3) (a) A petition for taking contempt of court proceedings shall be supported by an affidavit. In case of criminal contempt three copies of the application and the affidavit shall accompany the application:

Provided that if there are more than one opposite parties, the petition shall be accompanied by as many extra copies as there are opposite parties.

(b) When the petitioner relies upon any document or documents in his possession, he shall file the same along with the petition or a copy thereof as an annexure to the affidavit.

(c) A petition made under Section 15 (1) (b) of the Act shall also be accompanied by the consent in writing of the Advocate General and a copy thereof.

(4) Every petition in respect of criminal contempt, where it is not moved by the Advocate General and where the consent in writing of the Advocate General had not been obtained, and every petition in regard to criminal contempt of a subordinate court where no reference has been made by it and the petition is moved without the consent of the Advocate General shall clearly state the reasons why the consent in writing of the Advocate General could not be obtained and why the court has been approached to act suo motu.

#### **6. Examination of the reference:-**

(i) Every reference relating to contempt of a court subordinate to the High Court shall be scrutinized by the Registrar (Judicial) who shall place the same before the Chief Justice or any other Judge nominated by him in this behalf for obtaining orders.

(ii) When any publication, application, letter or intimation received by post or otherwise calls for any action being taken under the Act, by the High Court on its own motion, the matter shall be dealt with in the High Court of Himachal Pradesh Appellate Side Rules, 2018

manner prescribed in sub-rule (i), in the case of a criminal contempt of a Subordinate Court, the Chief Justice or the Judge as the case may be, may direct the papers to be sent to the Advocate General who will file a proper petition in the manner prescribed.

(iii) Every case of contempt of Court presented before the Court shall bear the report of the Stamp Reporter as to the sufficiency of Court-fee paid and also about limitation. References relating to contempt of court received on Administrative side from the subordinate courts shall, along with the office report with respect thereto, be laid before the Chief Justice, who shall have the discretion to file the same or to order that the same be laid before the Bench concerned, for further proceedings in connection with the case.

#### **7. Hearing of the petition, motion or reference:-**

(i) Every petition, motion or reference in relation to criminal contempt shall be heard by a Division Bench and a petition, motion or reference, in respect of civil contempt shall be laid before a Single Bench.

(ii). Such allegations contained in the petition as appears to the Court to make out a prima facie case of contempt of Court against the person concerned, shall be reduced into charge or charges by the Court against such person, and notice shall be issued only with respect to those charges :

Provided that the Court shall not issue a notice if more than a year has elapsed from the alleged act of contempt of court.

(iii) Where an order has been made directing that notice be issued to any person to show cause why he should not be punished for contempt of Court, a date shall be fixed for the hearing and a notice thereof in the prescribed form given to the person concerned. The notice of a criminal contempt shall also be served on the Government Advocate. The notice to be issued to a person charged shall be in the form appended to these rules and shall be accompanied by copies of the application, motion and

the affidavit or a copy of the reference by a subordinate court as the case may be and a copy of the charge or charges as framed by the court and shall require the person concerned to appear either in person or through counsel unless otherwise ordered before the Court at the time and on the date specified therein to show cause why he should not be punished for Contempt of Court. The notice shall be signed and dated by the Registrar (Judicial) and shall be issued under the seal of the High Court. Notice of every proceeding under Section 15 of the Act shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise.

(iv) Notice of any proceedings under the Act shall be served personally on the person charged unless the High Court for reasons to be recorded otherwise directs.

(v) The High Court may, if it is satisfied that the person charged is absconding or is likely to be absconded or is keeping or is likely to keep out of the way to avoid service of the notice, order the issue of warrant of his arrest which in the case of criminal contempt, may be in lieu of or in addition to the attachment of his property under Sub-section (iii) and (iv) of Section 17 of the Act. Such warrant may be endorsed in the manner laid down in Section 71 of the Code of Criminal Procedure, 1973, in terms of the orders of the High Court.

(vi) Whenever the High Court issues notice, it may dispense with the personal appearance of the person charged with the contempt if it finds reasons to do so and permit him to appear through his counsel at any stage of the proceedings.

#### **8. Detention of contemnor during pendency of the proceedings: -**

Pending the determination of the charge the Court may direct that the person charged with contempt under section 14 of the Contempt of Courts Act, 1971, shall be detained in such custody as it may specify.

**9. Informant not to plead unless directed by the court:-**

After giving information about the commission of contempt of court by any person or persons, the informant shall not have any right to appear or plead or argue before the Court unless he is called upon by the Court especially to do so.

**10. Bail in contempt case:-**

When any person charged with contempt appears or is brought before the High Court and is prepared, while in custody or at any stage of the proceedings, to give bail, such person shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned 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 that the High Court may if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid, or without executing such bond :

Provided further that on the failure of a person to comply with the conditions of the bail bond as regards the time and place of attendance, the Court may refuse to release him on bail when on a subsequent occasion in the same case he appears before the Court or is brought in custody and every such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof.

The provisions of Sections 422 to 448 and 450 of the Code of Criminal Procedure, 1973, shall so far as may be, apply to all the bonds executed under the Rule.

**11. Attachment of property and warrant of arrest in certain cases:-**

The Court may if satisfied that the person charged is absconding or likely to abscond or is keeping or is likely to keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable. In case of criminal contempt the Court may, in lieu of or in addition to the order of attachment of property, order the issue of a warrant of arrest of such person:

Provided that, in case the Court considers it fit and expedient, it may issue a warrant of arrest in the first instance.

Such warrant may be endorsed in the manner laid down in Section 71 of the Code of Criminal Procedure. The attachment referred to above shall be effected in the manner provided in the Code of Civil Procedure, 1908 for the attachment of property in execution of a decree for payment of money. If after such attachment, the person charged appears and shows to the satisfaction of the Court that he did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

## **B-CRIMINAL CONTEMPTS**

### **12. Cognizance of the Criminal Contempts:-**

(a) In the case of a Criminal Contempt, other than a contempt referred to in Section 14, the High Court may take action (i) on its own motion or (ii) on a motion made by the Advocate General, or (iii) in case of any other person, with the consent in writing of the Advocate General.

(b) Any person so charged may file an affidavit in support of his defence on the date fixed for his appearance or on such other date as may be fixed by the High Court in that behalf.

(c) If such person pleads guilty to the charge, his plea shall be recorded and the High Court may in its discretion convict him thereon.

(d) If such person refuses to plead or does not plead or claims to be tried or the High Court does not convict him on his plea of guilt, it may determine to a matter of the charge either on the affidavits or after taking such further evidence as it may deem fit.

**13. Reference by subordinate court:-**

A reference under Section 15(2) of the Act may be made by a subordinate Court either suo-motu or on an application received by it. The Subordinate Court before making a reference to the High Court shall hold a preliminary inquiry by issuing a show cause notice accompanied by copies of relevant documents, if any, to the condemner and after hearing the matter, the Subordinate Court shall make a concise reasoned order of reference to the High Court.

**14. Contempt in the presence of the Court:-**

When it is alleged or appears to the Court upon its own view that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and at any time before the rising of the Court, on the same day or as early as possible thereafter, shall--

(a) cause him to be informed in writing of the contempt with which he is charged, and if such person pleads guilty to the charge, his plea shall be recorded and the Court may in its discretion, convict him thereon;

(b) if such person refuses to plead, or does not plead, or claims to be tried or the Court does not convict him, on his plea or guilt, afford him an opportunity to make his defence to the charge, in support of which he may file an affidavit on the date fixed for his appearance or on such other date as may be fixed by the court in that behalf;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed either



forthwith or after the adjournment, to determine the matter of the charge; and

(d) make such order for punishment or discharge of such person as may be just.

### **C-CIVIL CONTEMPTS**

#### **15. Cognizance of Civil Contempt:-**

In the case of a civil contempt other than a contempt referred to in Section 14, the High Court may take action:-

- (a) On its own motion; or
- (b) On a petition presented by the party aggrieved; or
- (c) In the case of any civil contempt of a Subordinate Court, on a reference made to it by that Court.

The Subordinate Court will make a reference to the High Court in accordance with rule 13 of these rules.

#### **16. Affidavit by contemnor:-**

- (i) the person so charged with civil contempt may file his affidavit by way of reply to the charge and shall serve a copy thereof on the petitioner or his counsel at least seven days before the date of hearing.
- (ii) No further return, affidavit or documents shall be filed except with the leave of the High Court.

#### **17. Procedure:-**

In a case of civil contempt, the High Court may determine the matter of charge either on affidavits filed or on such further evidence as may be taken by itself or recorded by a Subordinate court in pursuance of a direction made by it and pass such order as the justice of the case requires having regard to the provisions of Sections 12 and 13 of the Act.

### **D-APPEALS**

#### **18. Appeal**

High Court of Himachal Pradesh Appellate Side Rules, 2018

An appeal under Section 19 of the Act shall be filed in accordance with the rules contained in Chapters-I-A(d) and 2-C of the High Court Rules and Orders Vol-V, in so far as the same may be applicable.

### **E-MISCELLANEOUS**

#### **19. Paper book and issue of copies in contempt cases:-**

(1) The rules contained in the Rules of Court pertaining to grant of copies and charging process fees in criminal matters and preparation of paper book in contempt of Court cases and such other matters in respect of which no provision has been made in this Chapter, shall apply mutatis mutandis to the proceedings under this Chapter and the appeals coming under Section 19 of the Act. Similarly, when proceedings are pending in subordinate Court, the Rules made by the High Court for the conduct of the business of such subordinate Courts shall apply to those proceedings.

(2) In a case where the proceedings are initiated by the High Court suo-motu or on the motion of the Advocate General or on a reference from the Subordinate Court, a paper-book for use of the court shall be prepared by the Registry of the High Court in triplicate. A paper-book shall consist of:-

- (i) Reference or order;
- (ii) An objectionable material, if any, alleged to constitute the contempt;
- (iii) Any other document which the Registry may deem fit to include or which the High Court may require.

(3) All relevant material brought on record from time to time shall be included in each paper-book.

(4) In any such case, the High Court may at any stage appoint an Advocate for the conduct of the proceedings.

#### **20. Application for transfer of hearing to be placed before Chief Justice:-**

Notwithstanding anything contained in these Rules, where a person charged with contempt under that rule applies, whether orally or in writing to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the court is of opinion that it is practicable to do so and that in the interest of proper administration of justice the application should be allowed, it shall cause the matter to be placed together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

**21. Expenses of witnesses:-**

Any person summoned by the High Court to appear as a witness in any proceedings under the Act shall be paid his expenses as may be determined according to the rules for the time being in force and which shall be paid out of the contingency fund of the High Court:

Provided that the High Court may direct any party to such proceedings to pay such expenses.

**22. Costs:-**

Where costs have been awarded by the Court in proceedings for contempt of court but have not been paid, the person entitled to them may apply to the Court for execution of the order. The application shall be accompanied by an affidavit stating the amount of costs awarded and the amount, remaining unpaid, and it shall be laid before the Court for orders. The Court may direct the Chief Judicial Magistrate to realise the amount due by himself or by any Magistrate subordinate to him. Such amounts shall be realised as if it were an amount of fine.

The High Court may direct any party to proceedings under the Act to pay the costs thereof as determined by it to any other party thereto.

**23. Execution:-**

The order passed in the proceedings under the Act shall be carried out, enforced and executed as if these were the orders passed by the High Court under the Code of Criminal Procedure, 1973.

FORM No.1

(NOTICE TO PERSON CHARGED WITH CONTEMPT OF COURT)

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CIVIL/CRIMINAL ORIGINAL PETITION (CONTEMPT)

...Petitioner

Versus

...Respondent

To

Whereas it appears that by your acts, conduct, utterances, and writing, you have committed contempt of court in the facts and circumstances mentioned in the enclosed copy of the petition/reference/motion. You are hereby required to appear in person (or by an Advocate if the Court so order) and to show cause before the court at Shimla on \_\_\_\_\_day of \_\_\_\_\_20\_\_\_\_ at 10 A.M. why you should not be punished or other appropriate orders be not passed against you for contempt of the High Court/Subordinate Court (name of the Court). You shall continue to attend the court on all dates (unless the court exempts you from personal appearance) thereafter to which the case may stand adjourned and until final orders are passed on the charge against you. **Herein fail not.**

GIVEN UNDER MY HAND AND THE SEAL OF THE COURT  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_

SEAL

REGISTRAR

\_\_\_\_\_

FORM II

WARRANT OF ARREST

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ORIGINAL CRIMINAL CONTEMPT PETITION

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

....Petitioner

Versus

...Respondent

To

(Name and designation of the person or persons who is or are to execute the warrant.).

WHEREAS.....(State the name of persons charged with contempt of court), a resident of .....is charged with committing contempt of the High Court or Subordinate Court (Name the Court). You are hereby directed to arrest the said .....and to produce him before this Court. Herein fail not.

REGISTRAR

(If the court has issued aailable 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 to attend until otherwise directed by this Court, he may be released.

Dated this.....day of .....20\_\_\_.

REGISTRAR

\_\_\_\_\_

FORM III

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

(ORIGINAL JURISDICTION)

CONTEMPT PETITION (CIVIL/CRIMINAL) No..... of 20\_\_\_

....Petitioner

Versus

...Respondent

To

The Superintendent (or Keeper) of the Jail at

.....

WHEREAS this court on this .....day of 20\_\_\_ adjudged (name of the contemnor with address).....guilty of willful contempt of court, and he has been sentenced to suffer

imprisonment for a term of ..... (here specify the term)  
and/or to pay a fine of Rupees.....

This is to authorize and require you, the Superintendent (or Keeper) or the said Jail to receive the said (Name of the contemnor) into your custody together with this warrant, and safely to keep him 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 the Court, at all times when the court shall so direct.

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

REGISTRAR

\_\_\_\_\_

## CHAPTER 19

### RULES RELATING TO COUNSEL FEES

#### 1. **Suit for debt, damages, and recovery of specific property.**

In suits for the recovery of specific property, or a part of specific property, whether movable or immovable or for the breach of any contract or for damages-

(a) If the amount or value of the property, debt or damages decreed shall not exceed rupees five thousand according to the valuation for the purposes of appeal to the Court, the fee shall be calculated at seven and a half percent (7½ on the amount or value decreed), but the Court, may, in any case, otherwise order and fix such percentage as shall appear to be just and equitable;

(b) If the amount or value decreed shall exceed rupees five thousand, the fee payable shall be calculated at such a percentage as shall appear to the Court to be just and equitable.

#### 2. **Suit for injuries to person or property or character Suits for partition and pre-emption and other rights.**

In suits for injuries to the person or character of the plaintiff, such as suits for assault or defamation or for injuries to property, or to enforce rights where the pecuniary value of such injury or right cannot be exactly defined, - as in suits for interference with a right or light or water, or to enforce a right of pre-emption or suits for the partition of joint property where partition is improperly resisted, if the plaintiff succeeds, the Court may order the fee allowed to the plaintiff to be calculated with reference either to the amount decreed or according to the valuation of the suit or according to such sum not exceeding the valuation, as the Court shall think reasonable and shall fix with reference to the importance of the subject matter in dispute. In any such case, the amount of the fee shall be calculated according to rule 1.

#### 3. **When suit dismissed on merits or default**



If the suit be dismissed for default or upon the merits, the fee allowed to the defendant shall be calculated according to rule 1 on the whole value of the suit.

4. **When suit partly dismissed**

If the suit shall be decreed for the plaintiff as to part only of the claim, and as to the remainder shall be dismissed, the fee allowed to each party should be fixed with reference to the value of that part of the claim in respect of which he shall succeed, and shall be calculated according to rule 1.

5. **In case of several defendants having separate interest.**

If several defendants who have a joint or common interest succeed upon a joint defence, or upon separate defences substantially the same, not more than one fee shall be allowed, unless the Court shall otherwise order. If only one fee be allowed, the Court shall direct to which of the defendants it shall be paid or shall apportion it among the several defendants in such manner as the Court shall think fit.

6. **Several defendants having separate interest.**

If several defendants, who have separate interest, set up separate and distinct defences and succeed thereon, a fee for each of the defendants who shall appear by separate counsel may be allowed in respect of his separate interest. Such fee, if allowed, shall be calculated, with reference to the value of the separate interest of such defendants, according to rule 1.

7. **Miscellaneous proceedings.**

In any miscellaneous proceedings or for any matter other than that of appearing, acting or pleading in a suit prior to decree, the fee shall be fixed by the Court with reference to the nature and importance of the proceeding or matter: Provided that in no case shall be the amount allowed in respect of such fee exceeds rupees seven hundred and fifty.

**8. Half fees in undefended suits.**

If a suit in the High Court, as a Court of original jurisdiction, be undefended, the fee shall be calculated at one-half the sum fixed for a defended suit of the same nature and value.

**9. When the review is rejected.**

If a review be rejected after summoning the opposite party or if, after the admission of a review, the former judgment be upheld, the fee, if allowed to the successful party in the review, shall be fixed by the Court at an amount which shall not, any case exceed one-half of the amount allowed by these rules in case of an original decree.

**10. When the review is accepted.**

If, after the admission of a review, the former judgment be revised, the fee in respect of the review, if allowed to the party who succeeds in the review, shall not exceed one-half the amount allowed by these rules in case of an original decree. The fee allowed in respect of the review will be irrespective of any fee which may be included in any costs in respect of the original suit which may be adjudged to the successful party by the judgment in a review unless the Court shall otherwise order.

**11. Appeals.**

In appeals, the fee shall be calculated on the same scale as in original suits; and the principles of the above rules as to original suits shall be applied, as nearly as may be, in appeals.

**12. Where several appellants have a joint interest.**

When the interest of several appellants is joint, not more than one fee shall be allowed, unless the Court shall otherwise order. If one fee only be allowed the Court shall direct to which of the appellants it shall be paid or shall apportion it amongst the several appellants in such proportion as it shall think fit.

**13. Several respondents.**

If several respondents in one appeal appear by separate counsel in determining whether separate fees shall be allowed, the Court shall be guided by the principles laid down in rules 6 and 7.

**14. Discretion of court to deviate from the scale laid in the rules.**

If in any instance, the payment of fees according to the preceding rules shall not appear to the Court to be just and equitable, the Court may exercise its discretion in allowing such fee as may appear just and equitable.

**15. Appeals from decrees passed on remand.**

Provided that if an appeal be preferred against a decree passed on remand, the fee, if any, allowed by the Court to the party succeeding in that appeal shall not, unless the Court shall otherwise order, be less than one quarter, not more than one-half of the amount which would be allowed under the rules upon an original hearing, if by the decree remanding the case, the same party shall have been allowed fees in respect of the former appeal in the suit either absolutely or conditionally upon his succeeding upon the remand:

**16. Fees for the trial of issues referred to the Lower court.**

Provided also, that if an issue be framed and referred by the Court for trial by a lower Court, the Court may, if it thinks proper, allow to the party who shall succeed in the appeal, such sum as the Court shall consider reasonable not exceeding half the amount, which would be allowed under these rules in an original case, for his fee in respect of the trial of the issue in the Lower Court, in addition to a fee in respect of the appeal.

**17. Certificate of payment of fees to counsel to be put in before fees are allowed by the Court.**

Notwithstanding anything contained in the rules of the Court and notwithstanding any order of a Judge or Judges, no fee for the appearance of any Advocate, Vakil or Attorney shall, except as in these High Court of Himachal Pradesh Appellate Side Rules, 2018

rules here-in after provided be allowed on taxation between parties, or shall be included in any decree or order unless the Taxation officer is satisfied that the fee was paid to the Advocate, Vakil or Attorney and unless the party claiming to have such fee allowed shall, within seven days after the judgment or order in the proceedings, file in the office of the Taxing Officer, a certificate signed by the Advocate, Vakil or Attorney as the case may be, certifying the amount of the fee or fees actually paid by or on behalf of his client to him or to any other Advocate, Vakil or Attorney in whose place he may have appeared.

#### **18. Contents of certificate**

Such certificate shall state:-

- (a) the case, matter or proceeding in respect of which such fee or fees was or were paid;
- (b) that date or dates when such fee or fees was or were actually paid to the Advocate, Vakil or Attorney engaged, the case, matter or proceeding either as the exclusive fee or fees of such Advocate, Vakil or Attorney or as the fee or fees of the Advocates, Vakils or Attorneys associated and to be associated in the case, matter or proceedings in the High Court. ;
- (c) the precise amount or amounts which was or were so paid;
- (d) that no portion of such fee or fees has been returned, and that no agreement for return or remission of the same has been made by the Advocate, Vakil or Attorney or by anyone on his behalf; and
- (e) the name and address of the person who made such payment:

#### **19. Certificate of payment where higher fees above the scale allowed.**

Provided that when a higher fee than is allowed by the scale is allowed by special order of the Court, a certificate of the payment of the

additional fee at any time may be accepted if filed before taxation in lieu of the certificate required by these rules.

**20. A form of Certificate of payment of fees.**

The certificate mentioned in rule 18 shall, so far possible, be in the following form:-

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Between .....and .....

For the purpose of presentation to the Taxing Officer having my fee allowed on taxation as against the party or parties who may be liable for costs under the judgment or order of the Court, I.....in accordance with rule 17 of the rules regulating the fees of counsel in the Court, hereby certify that I the above....., the following fees were paid to me as my exclusive fee was associated or as my fee as well as that of .....who.....with me in the case on the dates and by the person or persons specified below, and that no portion of such fees has been returned and that no agreement for such return or remission has been made by me or by anyone on my behalf or on behalf of .....who was/were .....associated with me in the case :-

Matter	Fee	Date of	By whom	Address of person
Payment	paid		who actually made such payment	

Signature.....

Date of Signature.....

Address of Advocate, Vakil or Attorney.....

Filed                    on                    the                    .....day                    of  
.....by.....

Note:- In the certificate of fees filed by the legal practitioners engaged by Government in cases in which the Union of India or a State Government is a party, or in which the actual party is not Government but Government Servants or some other persons whose defence Government decides to undertake at public expense, or in which a Municipal Committee or a Local Body or an improvement Trust is a party, it is sufficient to certify that a fee has been fixed not paid by the Legal Remembrance to Government, Himachal Pradesh or other appropriate authority as the case may be. The same procedure may, by a resolution of the Judges in the meeting be extended to counsel appearing on behalf of an Official Liquidator appointed by the High Court.

**21. Matrimonial Cases:-**

Counsel engaged in matrimonial cases in the High Court, should when filing a certificate required by rule 18, submit a detail of the work done or to be done by them for which they have charged their clients. Only those charges which are necessary to enable the parties to conduct the litigation will be allowed by the Taxing Officer who will bear in mind that the object in giving costs is to indemnify the successful party against the expenses to which he has been put by the unsuccessful party. The maximum fee in a defended matrimonial cause shall be Rs. 1,500/- and half that amount in undefended causes, provided that the Judge, who tries the case may allow the full fee in an undefended cause, should be nature of the work done by counsel warrant it.