

CHAPTER XX

PROCEEDINGS AT THE HEARING OF SUITS AND UPTO AND INCLUSIVE OF DECREES

274. Evidence how taken – Upon the hearing of any suit, the evidence of the witnesses shall be taken down in writing by or in the presence and at the dictation of the Judge or one of the Judges, not ordinarily in the form of question and answer but in that of a narrative, and the notes so taken shall be sufficient for all purposes and shall form part of the record.

275. Endorsement under Order XIII, Rule 4 of the Code of Civil Procedure. – The endorsement prescribed by Order XIII, rule 4 of the Code of Civil Procedure shall be signed by the officer attending in Court instead of by the Judge.

276. Extracts from or entries in document admitted in evidence to be initialed and marked. – Where extracts from or entries in any document are admitted in evidence the extent of such extracts or entries shall be indicated by the initials of the officer receiving and marking such extracts or entries and such officer shall, before so receiving or making any such extracts or entries, require the person tendering the same in evidence or his Advocate on record or the clerk of such Advocate to indicate by initials or other sufficient mode the extent of the extracts of entries so tendered.

277. Translation of entry to be marked instead of a copy thereof. - When an entry in any book which is not in the English language is put in evidence under Order XIII, rule 4 of the Code of Civil Procedure, the translation of such entry shall be marked and recorded in lieu of a copy thereof.

278. Proceedings in another suit how put in as evidence. – When any proceedings in a suit filed in the Court are necessary to be put in as evidence in another suit in the Court, they shall not be removed from the file of the former suit unless true copies thereof are substituted in the file of the former suit, unless the Judge shall otherwise direct.

279. Exemption to Muslims from appearance on certain days. – All cases in which Muslims are concerned, either as plaintiffs or as defendants or as Advocates, shall, on due notice in that behalf being given to

the Prothonotary and Senior Master, or in the case of part heard suits on applications to the Presiding Judge, be allowed to stand over and not be called on for hearing on the day on which any of the Muslim holiday is actually observed if it does not fall on the day notified. Muslim witnesses shall be exempted from attending on the said day.

280. Exhibits to be official translated. – Subject to Rule 630, no document, not in the English language, shall be read or received in evidence without an official translation thereof, except by leave of the Court.

281. Personal liability of advocate on record to pay costs. - Whereupon the trial of any suit or matter it appears that the same cannot conveniently proceed by reason of the Advocate on record for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or the Judge in chambers and which according to the practice ought to have been delivered, such Advocate shall personally pay to all or any of the parties such costs as the Court or the Judge in Chambers shall think fit to award.

282. Order for postponement. – When the hearing of any suit is ordered by the Court to be postponed, the officer attending in Court shall make a note of the order in the minute book. An entry of the date fixed shall then be made in the Register of suits, and the summons, if not already served, shall be amended accordingly. No formal order shall be drawn up.

283. Return of plaint. – (i)The Court or the Judge in Chambers may at any stage of the suit order the plaint to be returned to the plaintiff to be presented to the Court in which the suit should have been instituted.

(ii)When an order for return of the plaint is made, the Prothonotary and Senior Master or any officer subordinate to him shall endorse on the plaint (a) the date of its presentation, (b) the date of the order for its return, (c) the date on which the plaintiff furnishes a copy of the plaint and the date on which it is certified as a true copy by the office of the Prothonotary and Senior Master, as provided in sub-rule(iii) of this rule, and (d) the date of the return of the plaint.

(iii) The plaint shall be returned only after the plaintiff has furnished, for the record of the Court, a copy of the plaint and the said copy has been certified as a true copy by the office of the Prothonotary and Senior Master.

284. No decree unless suit on board. – No decree in a suit, save as provided in rule 788, shall be passed, unless the suit appears on the daily trial board.

285. Payment of costs to be condition precedent in the order for withdrawal of suit with liberty to file fresh suit. – When a suit is allowed to be withdrawn with liberty to bring a fresh suit in respect of the same subject matter, unless the Court shall otherwise direct, the order shall be drawn up so as to make the payment of the costs of the suit is a condition precedent to the plaintiff bringing a fresh suit.

286. Dismissal of suit on application of plaintiff, to be a bar to fresh suit. – Where on the application of the plaintiff the Court dismisses the suit either for want of prosecution or for any other reason, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action.

287. Dismissal under Order XXV, Rule 2, Civil Procedure Code to be a bar to fresh suit. – When a suit is dismissed under Order XXV, Rule 2 of the Code of Civil Procedure, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action, except with the permission of the Court, which may be granted on such terms as to payment of the costs of the former suit or otherwise as it thinks fit.

288. Disposal of suit without report to be notified to Commissioner. – Whenever a suit which is referred to the Commissioner is finally disposed of before the receipt of his report or is referred to arbitration by the order of the Court, the Prothonotary and Senior Master shall forthwith notify the same to the Commissioner, who shall thereupon remove the suit from his list.

289. Decree for maintenance. – In a decree for maintenance payable out of property charged with payment of the allowance, the Court may appoint, subject to such condition (if any) as it shall think fit, a receiver with directions in case of default in payment of the maintenance, to take

possession of the property and sell the same and out of the sale proceeds to pay the allowance for maintenance.

290. When Judge may order application for administration, etc. to stand over. – Upon an application for administration of the estate of a deceased person or for execution of a trust, by a creditor, by a beneficiary under a will, deed or trust, or by an heir on an intestacy, where no accounts or insufficient accounts have been rendered, the Court or the Judge in Chambers may in addition to the powers already existing –

- (a) order that the application shall stand over for a certain time, and that the executors, administrators or trustees in the meantime shall render to the plaintiff or applicant a proper statement of their accounts, with an intimation that if this is not done, they may be ordered to pay the costs of the proceedings; and
- (b) When necessary to prevent proceedings by other creditors or by persons beneficially interested make the usual order for administration with a proviso that no proceedings are to be taken under such judgment or order without the leave of a Judge.

291. Costs of inquiry as regards right to legacy etc. – The costs of an inquiry to ascertain the person entitled to any legacy, money or share of immovable and movable property, or otherwise incurred in relation thereto shall be paid out of such legacy, money or share unless the Court or the Judge in Chambers shall otherwise direct.

292. Distribution not to be delayed by difficulties as to some shares. – Where some of the persons entitled to a distributive share of property are ascertained and difficulty or delay has occurred or is likely to occur in ascertaining the persons entitled to the other shares the Court or a Judge may order or allow immediate payment or transfer of their shares to the persons ascertained and in all such cases such order may be made for ascertaining the person entitled to the other shares as the Court or the Judge shall think fit.

293 Sale and sub-division of securities implied in order for payment of fund. – Every decree or order for the payment of money out of a fund which is subject to the order of the Court shall, for the purpose of such payment, be deemed to authorize the sale and sub-division on the securities belonging to the fund or of a sufficient portion thereof.

294. Post of ante-dating of decrees. – By leave of the Judge a decree may be ante-dated or post-dated.

295. Liberty to apply implied in decree or order that is not final. – In every decree and order that is not final, liberty to apply shall be implied.

¹[**296. Judgment how passed.** - (i) The judgment shall be pronounced in open Court and a minute thereof made by the Officer attending in Court;

(ii) A judgment delivered by the Court, when initialled by the Judge pronouncing it, either on the transcript of the Judgment or on the approval sheet attached to it, shall be final Judgment of which copies could be supplied to the parties or their Advocates, unless the Judge delivering it desires that he want to have a fair copy of the Judgment for approval. In the latter event, the Judgment shall be considered to be final when the fair copy is approved and initialled by the Judge;

(iii) Where Judgment has been reserved in a Suit, Appeal or Matter heard by a Division Bench or a Special Bench, consisting of two or more Judges, and all of them are not available for sitting together at one place, such Judgment may be pronounced by any of the Judges, who heard the Suit, Appeal or Matter after the transcript or the transcripts of the Judgment is or have been initialed by all the Judges who heard the Suit, Appeal or Matter.]

1. Rule 296 was substituted by G.N.No.G/Amend/4504,dated 22nd June 1992, pub. In M.G.G, Pt. IV-Ka, p. 386.

297. Issuing and filing of minutes of decrees of orders passed in Court. – The office of the Prothonotary and Senior Master shall within three days of the passing of every decree or order in Court, issue minutes of such decree or order. The minutes shall be kept in the Board Department for the inspection of the parties for a period of three days

from the date of the issue of the minutes. Any party desiring to inspect the minutes shall be entitled to do so on making an oral application to the person in charge of the Board Department. Any party who disputes the correctness of the minute as recorded or objects to the minutes on any other ground may, within four days after the expiry of the period of inspection, apply on the Prothonotary and Senior Master to place the matter before the Court for speaking to the minutes. If no such application is made, the minutes shall be deemed to have been accepted and shall be filed in the proceedings. If such application is made, any variation made by the Court shall be incorporated in the minutes which shall than be field.

298. Contents of decree. – A decree shall contain the number of the suit, the names and description of the parties and particulars of the claim and shall state whether both sides appeared and how, and whether evidence was taken and shall specify clearly the relief granted or other determination of the suit but no issues or findings thereon shall be inserted unless by special directions of the Judge, nor shall there be any recitals other than such short ones as the Prothonotary and Senior Master thinks necessary. The decree shall also state the amount of costs incurred in the suit and by whom and out of what property and in what proportions costs are to be paid.

Decrees and Orders passed in Court

299. Interlocutory orders passed in Court not to be drawn up. -
It shall not necessary to draw up Orders made in interlocutory proceedings unless the Court or the Prothonotary and Senior Master otherwise directs.

300. Drawing up decrees and orders passed in Court. – ¹ [(1) A Decree passed in Court, an Order made in Court other than an Order on an interlocutory application, and an Order made in Court on an interlocutory application which has been directed under the last preceding rule, shall be drawn up by the party initiating the proceeding, unless the Court otherwise directs. Such party shall lodge the draft of the Decree or Order, for settlement in the office of the Prothonotary and Senior Master within four weeks from the date of the original Judgment or Order being available and shall apply to fix a time to settle the draft. Such party shall forthwith forward copies of the draft to all parties who

have appeared at the hearing of the suit or matter. The office of the Prothonotary and Senior Master shall check the draft and make such alterations in the draft as it may consider necessary and warranted by the directions of the Court. After the draft is checked, the office of the Prothonotary and Senior Master shall fix a date for setting the draft but ordinarily not earlier than ten days after the date of the lodging of the draft but within four weeks from the date of the lodging. A notice shall be put up on the notice board of the Decree Department intimating to the parties the date fixed for settlement of the draft. No other notice shall be given of the date so fixed, except that when a party has appeared in person, the party lodging the draft shall send notice of the meeting to him. Any party desiring to inspect the draft as checked by the office shall be entitled to do so on making an oral application to the person in charge of the Draft section of the Decree Department. The draft shall be finally settled by the Prothonotary and Senior Master or by any one of his assistants. If any part fails to attend the meeting for settlement of the Draft, the concerned Officer shall proceed to settle the Draft notwithstanding such absence.]

[1.Rule 300\(1\) was substituted by G.N.No.G/Amend/2419, dated 27th March 1991, pub.in M.G.G.Pt. IV Ka,p. 17-173.](#)

(2) If the party whose duty it is to draw up the decree or order does not lodge the draft in the office of the Prothonotary and Senior Master within ten days from the date of the decree or order, it shall be open to any other party to the proceeding to draw up and lodge such decree or order. Then the procedure prescribed in sub-rule (1) shall be followed.

(3) In case the party initiating the proceeding is a party in person, the decree or order shall, at his request, be drawn up by the office of the Prothonotary and Senior Master. The Office shall give notice of the draft being ready to the party in person and shall put up a notice on the notice board of the Decree Department intimating the date fixed for the settlement of the draft. Any party desiring to inspect the draft shall be entitled to do so on making an oral application to the person in charge of the Decree Department. The draft shall be finally settled by the Prothonotary and Senior Master or by any one of his assistants.

(4) Any party dissatisfied with the draft as settled by the office of the Prothonotary and Senior Master may, within two days from the date of

settlement of the draft, apply to the Prothonotary and Senior Master to place the matter before the Court for settlement of the draft. If no such application is made, the draft is settled by the office of the Prothonotary and Senior Master shall be deemed to have been accepted. If such application is made, any variation made by the Court shall be incorporated in the draft.

(5) Decrees and orders passed in Court shall be signed by the Prothonotary and Senior Master or by one of his assistants and sealed with the seal of the Court.

301. Drawing up decrees in urgent cases – In cases where it is necessary that the decree or order should be urgently drawn up any party may draw up the decree or order and lodge the draft in the office of the Prothonotary and Senior Master and apply to fix an urgent meeting to settle the draft of the decree or order. Such party shall forward copies of the draft to all other parties who have appeared at the hearing of the suit or matter and shall give intimation to them of the time fixed by the office of the Prothonotary and Senior Master for settling the draft of the decree or order.

302. Prothonotary and Senior Master may proceed ex-parte. – If any party fails to attend before the Prothonotary and Senior Master at the time of settling the draft of a decree or order or fails to produce his briefs or any documents called for by the Prothonotary and Senior Master, the Prothonotary and Senior Master may proceed to settle such draft in his absence or without the production of the briefs or documents aforesaid, or may require the matter to be mentioned to the Court.

303. Draft decree or order may be submitted to Judge. – In cases of doubt or difficulty, the Prothonotary and Senior Master may submit the draft of the decree or order to the Judge who passed the decree or order.

304. Errors, how rectified after decree or order is sealed. – After a decree or order has been sealed, any application to rectify an inaccuracy or clerical or arithmetical error shall be made to the Prothonotary and Senior Master and he may, in his discretion, after notice to the parties when he deems it necessary, rectify such inaccuracy or error. The Prothonotary and Senior Master may, if he thinks fit, place the matter

before the Judge who passed the decree or order or in the event of his absence on leave or retirement before any other Judge and the Judge may, in his discretion, after notice to the parties when he deems it necessary, amend the decree or order so as to bring it in conformity with the judgment or rectify such inaccuracy or error.

305. Applications for return of exhibits must be made within ten days. – Applications by parties or their Advocates for the return of exhibits put in at the hearing shall be made within ten days after the time for appealing against the decree in the suit has expired, or in case an appeal is filed within ten days after the disposal of the appeal.

306. Return of exhibits. – Documents, not directed by the Judge who has heard a suit or proceeding to be retained, will be returned by the Prothonotary and Senior Master on the expiration of the time for appealing (if no memorandum of appeal has been filed) unless cause to the country appears or they are of the nature specified in the fourth proviso to Order XIII, rule 9 of the Code of Civil Procedure.
