CHAPTER XXVIII

OFFICE OF THE SHERIFF OF BOMBAY

445. Sheriff to serve and execute process:- The Sheriff shall execute the process of the High Court. He shall serve such process within the local limits of the Ordinary Original Civil Jurisdiction of the High Court by his bailiff or if the party so desires by registered post pre-paid for acknowledgement. Where the process is to be served beyond the said limits, the Sheriff shall serve the same by registered post pre-paid for acknowledgment. The Sheriff shall not be compellable to go in person or by his bailiff beyond the said limits for the purpose of serving or executing any process, unless so directed by the Court or the [1][Judge].

[2][In addition to above, Writ of Summons may be served as prescribed by Chapter VI (as amended) of these Rules.]

446. Special bailiff to execute process within limits:- Upon occasions when it may be necessary or expedient to get a writ of summons served or other process executed within the local limits of the Ordinary Original Civil Jurisdiction of the High Court by a person other than the Sheriff's bailiff, the Sheriff may appoint a person, nominated by the Advocate of the party, as his special bailiff for that purpose and in order to prevent any improper use or abuse of the process of the Court, the said Advocate shall give an indemnity to the Sheriff for its proper service or execution to the satisfaction of the Sheriff.

447. Special bailiff to execute process beyond limits:- Upon occasions when it may be necessary or expedient to execute process beyond the said ordinary limits, but within the limits of the State of Maharashtra, the Sheriff shall appoint such person as the Court or the Judge in Chambers may direct as his special bailiff for that purpose and in order to prevent any improper use or abuse of the process of the Court, the party at whose instance the same is issued shall give such security or indemnity to the Sheriff for its proper execution as the Court or the Judge in Chambers shall direct.

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1. Substituted vide Notification No. G / Amend/610/2022, dated-24-03-2022.
2 . Inserted vide Notification No. G / Amend/610/2022, dated-24-03-2022.

[1][**448. Time within which writ of summons to be lodged for service.-**

(1) The Writ of Summons in Suits, other than Commercial Suits, shall be transmitted for service to the office of the Sheriff within two weeks from the date of issuance of Writ of Summons or from the date of any order for amendment of the Writ of Summons. If it is not so lodged, the Sheriff shall not accept the Writ of Summons for service, unless otherwise ordered by the Prothonotary & Senior Master or by the Judge

(2) The Writ of Summons in Commercial Suits shall be transmitted for service to the office of the Sheriff within ten days from the date of issuance of Writ of Summons or from the date of any order for amendment of the Writ of Summons. If it is not so lodged, the Sheriff shall not accept the Writ of Summons for service, unless otherwise ordered by the Judge

(3) After effecting the service by the office of Sheriff, the Advocate shall file affidavit of service within 2 weeks otherwise the office of Sheriff shall file the service report of the Bailiff directly to the Court thereafter.]

449. Date of lodging process to be noted on the process: - The Sheriff shall note on every process the date on which it was lodged in his office.

450. Service of certain notices:- All notices under sections 73 and 145 and under Order XXI, Rule 2, 16, 22, 34 and 37 of the Code of Civil Procedure shall be served through the Sheriff.

451. Sheriff to execute all warrants: - The Sheriff shall, unless otherwise ordered, execute all warrants of arrest, and of attachment and sale of movable and immovable properties in execution of decrees and orders of the Court.

452. Warrant for arrest of an insolvent: - (1) When forwarding to the Sheriff a warrant for the arrest of an insolvent or for the arrest of any person for contempt of Court, the Insolvency Registrar shall send with the warrant the Sheriff's fee for filing the same.

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1. Substituted vide Notification No. G / Amend/610/2022, dated-24-03-2022.

(2) The Insolvency Registrar shall endorse on every bailable warrant issued by him in the name of the person before whom the bail is to be justified.

453. Battaki, when beaten:- For the purpose of Order XXI, Rules 36, 54, 67 and 96 of the Code of Civil Procedure, the Sheriff shall beat a *battaki* on the premises at the time action is taken under the said rules.

454. Writ of summons and other process not to be served on Saturdays, Sundays and holidays: - No writ of summons or other process shall be served or executed on Saturdays, Sundays and Holidays, except by leave of the Court or the Judge in Chambers. For such service or execution effected or attempted on the days aforesaid, the Sheriff shall be entitled to an extra fee.

455. Service at advocate's office not to be effected after 5.30 p.m.:- The Sheriff shall not serve a writ of summons or other process at the office of an Advocate after 5-30 p.m. on week days.

456. Service on Advocates:- (a) When service is to be effected on an Advocate, such service may be effected on the Advocate or on his assistant or clerk.

(b) When service is to be effected on a firm of Advocates, such service may be effected on any partner or assistant or clerk of such firm.

457. Service by parties in person: - Parties in person shall serve all summonses and other processes through the Sheriff.

458. Translation of process to be served on person not knowing English:- (a) When a summons or other process has to be served or executed, the Advocate at whose instance the summons or other process is issued shall certify whether the person to be served is conversant with the English language. If such certificate is not given, the Sheriff shall at the time of such service or execution also serve such person with a true translation of the summons or other process in the language with which such person is familiar:

Provided that where the person to be served is not familiar with English, Marathi, Gujarati or Hindi, it will be sufficient to serve such a person with a translation of the summons or other process in Hindi.

(b) Where it is necessary to affix a warrant or order of attachment on the house, land or tenement of any person for the purpose of executing such warrant or order of attachment, the Sheriff shall if such person is not certified as specified in clause (a) also cause to be affixed in some conspicuous place on the premises a true translation of the warrant or order in the language with which such person is familiar, and the proviso clause (a) will also apply.

(c) Sub-rule (a) will also apply, mutatis mutandis, to service of a Notice of Motion, summons for Judgment or Chamber Summons.

459. Service of summons or process received from the Registrar, High Court, Appellate Side :- Whenever a notice or other process is received from the Registrar of the High Court, Appellate Side, for service within the local limits of the Ordinary Original Civil Jurisdiction of the High Court, the Sheriff shall serve the same and return to the Registrar the original process, accompanied by an affidavit of the bailiff serving the process and also of the person or persons, if any, pointing out to him the party on whom the process has been served.

460. On receipt of precept, warrant of attachment to issue: - Where under section 46 of the Code of Civil Procedure, 1908, a precept is received by the Prothonotary and Senior Master, he shall forthwith issue the appropriate warrant of attachment and forward it to the Sheriff for execution. The Sheriff may refuse to execute the warrant, unless the fees due to him for execution are paid by the judgment-creditor and a representative of the judgment-creditor accompanies the bailiff to point out the property to be attached.

461. Deposit of subsistence allowance with warrant of arrest: - With every warrant of arrest there shall be deposited with the Sheriff the sum of Rs.5 for the interim subsistence of the judgment-debtor, pursuant to Order XXI, Rule 39(1) of the Code of Civil Procedure.

462. Judgment-creditor to make a deposit with the Sheriff for incidental expenses of maintenance of attached property: - When a warrant of attachment is lodged in the Sheriff's Office, the judgment-creditor shall deposit with the Sheriff such sum as will, in the

opinion of the Sheriff, be sufficient to cover the incidental expenses of maintaining possession of the property to be attached. When the amount deposited becomes insufficient to cover the said expenses, the Sheriff shall be entitled to call upon the judgment-creditor to deposit such further amount or amounts as he may deem fit. If the amount be not deposited, the Sheriff shall be entitled to withdraw from possession.

463. Sheriff to insure attached property if necessary: - In case where, in the opinion of the Sheriff, it appears necessary to insure movable or immovable property which has been attached, the Sheriff may have it insured and require the judgment-creditor to pay the insurance premium. If the judgment-creditor fails to pay the premium, the Sheriff shall report to the Judge in Chambers and obtain the Judge's directions after giving four days' notice to the judgment-creditor. The Judge may give such directions as to him may seem just.

464. Release of person arrested or property attached before judgment:- Any person arrested or any property attached before judgment shall be released from arrest and attachment by the Sheriff immediately on his being served with a certificate issued by the Prothonotary and Senior Master that sufficient security has been taken by that officer.

465. Judgment-debtor to be released on the written request of the judgment-creditor:- The Sheriff shall release the judgment-debtor on the written request of the judgment-creditor or his Advocate on record, unless some other warrant under which the judgment-debtor could be arrested has been lodged in his office.

466. Attachment to be withdrawn on the written request of the judgment-creditor:-The Sheriff shall withdraw the attachment levied on movable or immovable property on the written request of the judgment-creditor or his Advocate on record, unless some other warrant under which the said property could be attached has been lodged in his office.

467. Levy of sums mentioned in warrant of arrest or attachment:- The Sheriff shall receive or levy the sums mentioned in every warrant of arrest or of attachment and a sufficient sum of interest (where interest is payable) besides his own fees and poundage.

468. Release of judgment-debtor and withdrawal of attachment on receipt or realisation of moneys mentioned in the warrant:- On receipt or realisation of the moneys specified in the last preceding rule, the Sheriff shall, in the case of a warrant of arrest, release the

judgment-debtor, unless some other warrant under which the judgment-debtor could be arrested has been lodged in his office, and in the case of a warrant of attachment, withdraw the attachment, unless some other warrant under which the property in question could be attached has been lodged in his office.

469. Production before Judge of persons arrested order of committal, warrant of committal:- Every person arrested who is not released under any of the preceding rules shall, as soon as practicable, be brought before the Judge in Chambers or if he is not available, before any other Judge upon all warrants or arrest lodged against him in the Sheriff's office for an order of committal or otherwise, but in no case after 8-00 p.m. A note of the order and the rate of subsistence allowance fixed (if any) shall be endorsed on the warrant of arrest by the officer in the attendance and authenticated by him with his initials. Upon production in the Prothonotary and Senior Master's office of the warrant with an endorsement ordering a committal, a separate warrant shall be issued for the commitment of the person to jail, in which the rate of subsistence allowance if fixed as aforesaid shall be specified; Provided that in case of two or more warrants the Judge may apportion the subsistence allowance between the Judgment-creditors in such manner as he thinks just.

470. Production of persons arrested after 8 p.m.:- Every person arrested after 8.p.m. shall be immediately lodged in the civil jail and brought before the Judge in Chambers or if he is not available, before any other Judge at the opening of the Court the next day. If the next day happens to be a Sunday or other holiday, such person shall be brought before the Judge in Chambers or if he is not available, before any other Judge, at his bunglow.

471. Superintendent of jail to keep in custody person arrested or committed: - The Superintendent of the Civil Jail, Bombay shall receive and keep in his custody any person arrested by the Sheriff till the said person can be placed before a Judge for an order of committal or otherwise.

On an order of committal being made, the Sheriff shall lodge the said person in the Civil Jail and the Superintendent of the jail shall detain the said person until he is duly discharged according to law or the order of the Court. A certified copy of the warrant of committal shall be served on the Superintendent.

472. Production before Judge, under fresh warrant, of person already in custody: - When the Sheriff receives a warrant to arrest a person already in the custody of the

Superintendent of the Civil Jail, Bombay, under civil process, he shall forthwith bring the person before the Judge in Chambers or if he is not available, before any other Judge for an order of committal. The Judge may then apportion the subsistence allowance between the detaining creditors in such manner as he thinks just.

473. Application for production of person in custody: - If it shall at any time be necessary that a person in the custody of the Superintendent of the Civil Jail, Bombay should be brought up before the Court, the application for that purpose shall be supported by an affidavit and by the production of the Sheriff's return of having executed the warrant of arrest. The officer having the custody of the Sheriff's return shall cause the same to be produced before the Court on a request being made to him in writing by the person making the application.

474. Liability for Sheriff's poundage.— (1) In cases where a person is arrested or property is attached, the party or the Advocate on record for the party at whose instance the arrest was made or the attachment levied shall be liable to the Sheriff for his fees or poundage, as the case may be.

(2) Any amount received by the judgment-creditor from the judgment-debtor in full or part satisfaction of a decree or order in respect of which a warrant of arrest or a warrant of attachment has been executed shall be presumed to have been realized under the warrant, if the warrant is merely suspended and not dead.

(3) Where the execution-creditor or his Advocate on record receives direct any instalment or other sum ordered to be paid by the Judgment-debtor in full or part satisfaction of the decree or order, he shall file a precipe in the Sheriff's office informing him of the payment made.

(4) The Advocate on record shall be responsible for filling this precipe, if the payment has been made through his office or he has been informed of it by the execution-creditor.

475. Advocate to file in Sheriff's Office copy of order releasing judgment-debtor or raising attachment.—When an order is passed releasing a judgment-debtor or raising an attachment, the Advocate on record for the party at whose instance the order is made shall file a certified copy thereof in the Sheriff's Office and shall inform the Sheriff whether there

has been any satisfaction, compromise or settlement and, if so, for what amount and also whether poundage has been paid in respect thereof.

476. Satisfaction not to be entered without Sheriff's certificate. — Where warrants in execution have been lodged with the Sheriff, no satisfaction in full or part of any decree or order in any suit or matter shall be entered thereon without the production of a certificate of the Sheriff that no poundage is due to him.

477. Payment of money realised under warrant of arrest.—The Sheriff shall receive money tendered to him under any warrant of arrest and shall, unless otherwise ordered, pay the same to the judgment-creditor or to his Advocate on record if he is duly authorised and shall notify such payment to the Prothonotary and Senior Master.

Sheriff to certify receipt of money in other cases.—In all other cases, whenever the Sheriff shall receive money under warrants of attachment or realise assets by sale or otherwise from the property of the judgment-debtor, he shall soon thereafter certify to the Court the amount and the date of such receipt or realisation and shall hold the same until further orders of the Judge in Chambers or the Prothonotary and Senior Master : Provided that when a portion of the pay or salary of a Judgment-debtor is paid monthly to the Sheriff in execution of a decree or order, he shall certify the same to the Prothonotary and Senior Master at such periods only as he may think fit.

Sheriff to levy the costs of Prothonotary's order.—When the amount mentioned in the margin of the warrant is paid, the Sheriff shall also levy the amount of the costs of obtaining the Prothonotary and Senior Master's order for payment.

478. Sheriff to sell property of judgment-debtor and to credit sale proceeds to Government, if unclaimed for one year.—(l) Where there are goods of the judgment-debtor on the premises of which the Sheriff is directed to give vacant possession under a warrant of possession either under Order XXI, rules 35 and 36 or Order XXI, rules 95 & 96 of the Code of Civil Procedure, the Sheriff shall sell the same, but immediately thereafter and if possible prior thereto, he shall give public notice in the press as to the goods or the sale proceeds lying with him, if the value of the goods or the sale proceeds exceeds Rs.500 and where a sale has taken place, he shall hold the same till a claim is made. If no such claim is made within one

year from the date of the sale, the amount of the sale proceeds shall be credited to Government.

(2) In cases where the Sheriff is directed to sell movable property and has sold such portion of the property as is sufficient to satisfy the judgment debt, costs of execution, etc., he shall hand over the surplus property to the judgment-debtor if he be present or to his authorised agent. If the judgment-debtor is not present nor represented by an authorised agent, the Sheriff shall sell the same immediately and hold the sale proceeds of the surplus property till a claim is made. If no such claim is made within one year from the date of the sale, the amount of the sale proceeds shall be credited to Government.

479. Proclamation of sale in case of movable property.—In the case of sale of movable property, the Sheriff shall prepare the proclamation required by Order XXI, rule 66 of the Code of Civil Procedure and shall publish it or material extracts therefrom in such newspapers as he may deem proper. In cases where such publication is made in a newspaper which is not in the English language, the translation of the proclamation or the material extracts therefrom shall be made by the Official Translator.

480. Proclamation of sale in case of immovable property.—In the case of sale of immovable property, the Commissioner for Taking Accounts shall prepare the proclamation required by Order 21, rule 66 of the Code of Civil Procedure and shall forward it to the Sheriff On receipt of the proclamation of sale, the Sheriff shall publish it or material extracts therefrom in such newspapers as he may deem proper. In cases where such publication is made a newspaper which is not in the English language, the translation of the proclamation or the material extracts therefrom shall be made by the official translator.

481. Sale of movable property subject to certain conditions.— Every sale of movable property by the Sheriff shall be made subject to the following conditions:-

1) Terms cash.
2) Lots sold to be at the risk and expense of the purchaser from the time of sale, and to be removed by him with all faults and errors of description immediately after the sale.
3) Should any mistake be made in describing any articles, such mistakes shall not be held to vitiate or affect the sale of such articles in any way, it being understood that

intending purchasers shall satisfy themselves on all points before purchasing and no dispute shall be entertained after the sale.

482. Sale of immovable property subject to certain conditions.—Every sale of immovable property by the Sheriff shall be made subject to the following conditions:-

1) The highest bidder shall be the purchaser. If any dispute arises between two or more bidders, the property in dispute shall be put up again at the last undisputed bidding.

2) The person who shall be declared to be the purchaser shall deposit immediately twenty-five per cent of the amount of his bid, and in default, the property shall forthwith be again put up and sold. Such deposit shall be made in cash, unless the execution-creditor or his Advocate on record consents to receiving payment by cheque.

3) The balance of the purchase money, together with the amount of stamp-duty payable on the sale certificate to be issued by the Court, shall be paid by the purchaser before the closing of the Sheriff's office on the thirtieth day from the day of sale or if the thirtieth day be a Sunday or other close holiday, then on the first day on which the office shall be open after the thirtieth day and in default of payment of the said amounts within such period, the deposit may, if the Court thinks fit, after defraying the expenses of the sale be forfeited to the Government and the property shall be resold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold. If the proceeds of the re-sale be less than the price bid by such defaulting purchaser, the difference shall be leviable from him under the rules contained in Order XXI of the Code of Civil Procedure for the execution of a decree for money.

4) The sale shall not become absolute until the same has been confirmed by the Court.

5) If the sale be set aside by the Court, or if the judgment-debtor has no saleable interest whatever in any lot sold under these conditions, the purchaser shall be

entitled to receive back his purchase-money with or without interest as the Court may direct.

6) The right, title and interest only of the judgment-debtor in the above described property is sold by the Sheriff.

7) The sale is made under and subject to all other provisions contained in the Code of Civil Procedure relative to sales in execution of decrees.

483. Rules relating to arrest and attachment after judgment to apply to arrest and attachment before judgment.—The rules in this Chapter relating to arrest or attachment in execution of a decree or order shall, with any necessary modifications, apply to arrest or attachment before judgment.

484. Sheriff may give authority to Deputy Sheriff.—The Sheriff may authorise the Deputy Sheriff or any other person to execute the process of the Court. Any act done by the Deputy Sheriff or such other person pursuant to such authority shall be deemed to the act of the Sheriff.

485. Sheriff to include Deputy Sheriff, etc.—In these rules the term "Sheriff' shall include the Deputy Sheriff or other officer who may be appointed to execute the process of the Court.

486. Performance of Deputy Sheriff's duties during his absence.—During the temporary absence of the Deputy Sheriff, the Head Clerk may be authorised by the Sheriff by order in writing to perform the duties usually performed by the Deputy Sheriff.

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