

CHAPTER XXXIII

RULES FOR THE ISSUE OF WRITS UNDER ARTICLE 226 OF THE CONSTITUTION OTHER THAN HABEAS CORPUS

@[636. Application for Writ, etc., under Article 226 of the Constitution.— (1) (a) Application under Article 226 of the Constitution other than an Application for a Writ of Habeas Corpus, in matters arising substantially within Greater Bombay out of –

- (i) The orders passed under the Bombay Municipal Corporation Act, 1888;
- (ii) The orders passed under the Maharashtra Housing and Area Development Act, 1976, and under the enactments repealed by the said Act;
- (iii) The orders passed under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act; 1971;
- (iv) The orders passed under the Industrial Disputes Act, 1948;
- (v) The orders made in applications under the Bombay Industrial Relations Act, 1946;
- (vi) The orders passed under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (Act XIV of 1975);
- (vii) The orders passed under the Maharashtra Co-operative Societies Act, 1960;
- (viii) The orders passed under Chapter VI and WI of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971;
- (ix) The orders passed under the Payment of Gratuity Act, 1972; (Act No. 39 of 1972);
- (x) The orders passed under the Workmen's Compensation Act, 1923;

- (xi) The orders passed under the Payment of Wages Act, 1936;
- (xii) The orders passed under the -Minimum Wages Act, 1948;
- (xiii) The orders passed under the Bombay Prohibition Act, 1949;
- (xiv) The orders passed under the Maharashtra Land Revenue Code, 1966;
- (xv) The orders passed under the Maharashtra University Act, 1994;
- (xvi) The orders passed under the Bombay Stamp Act, 1958;
- (xvii) The order passed under the Bombay Police Act, 1951;
- (xviii) The orders passed under the Bombay Shops and Establishments Act, 1948;
- (xix) The orders passed under the Bombay Port Trusts Act, 1879;
- (xx) The orders passed under the Bombay City (Inami and Special Tenures) Abolition and Maharashtra Land Revenue Code (Amendment) Act, 1969;
- (xxi) The orders passed under the Banking Corporation (Acquisition and Transfer of Undertakings) Act, 1970;
- (xxii) The orders passed under the Displaced Persons (Compensation) Rehabilitation Act, 1964;
- (xxiii) The orders passed under the Electric (Supply) Act, 1948;
- (xxiv) The orders passed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
- (xxv) The orders passed under the Employees' State Insurance Act, 1948;
- (xxvi) The orders passed under the Factories Act, 1948;

- (xxvii) The orders passed under the Indian Railways Act, 1890;
- (xxviii) The orders passed under 3 the Electricity Act, 2003;
- (xxix) The orders passed under the Motor Vehicles Act, 1939;
- (xxx) The orders passed under the Major Port Trust Act, 1963;
- (xxxi) The order passed under the Merchant Shipping Act, 1958;
- (xxxii) The order passed under the Registration Act, 1908;
- (xxxiii) The orders passed under the Wireless, Telegraphy Act, 1933;
- (xxxiv) The orders passed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1971;
- (xxxv) Orders passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971;
- (xxxvi) Orders passed under Bombay Public Trusts Act, 1950,
- ¹(xxxvii) Orders passed under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

1. Added Notification No. G/Amend/435/2021, dated: 12th May, 2021. published in M.G.G. 2021, Extra Ord., Part IV-C dt. 19-05-2021.

may be heard and finally disposed of by a Single Judge to be appointed in this behalf by the Chief Justice:

Provided when the matter in dispute is or relates to the challenge to the validity of any statute or any rules or regulation made thereunder and arising substantially within Greater Bombay shall be heard and disposed off by a Division Bench to be appointed by the Chief Justice:

Provided further that the Chief Justice may assign any petition or any category of petitions falling under Clauses (i) to (xxxvi) or any Clause that may be added hereinafter, to a Division Bench. -

Explanation.—The expression "order", appearing in clauses (i) to (xxxvii) means any order passed by any Judicial or quasi-judicial Authority empowered to adjudicate under the. above mentioned statutes.

[@](#) Substituted vide High Court Notification No. P. 3601 / 2013 dt. 27-08-2013 published in M.G.G., Extra Ord., Part IV-C dt. 28-08-2013.

(1) (b) All applications under Article 226 other than those mentioned in Sub-rule (1) (a) above, shall be heard and disposed of by a Division Bench to be appointed in this behalf by the Chief Justice.]

¹[(2) Every application mentioned in ²[sub-rule (1) (a) and (1) (b)] shall be accompanied by a Certificate of the Advocate for the Petitioner, certifying that the application in question arises out of the matters mentioned in sub-rule (1) or sub-rule (2) and for placing the same for hearing before a Division Bench or a Single Judge, as the case may be.

1. Sub-rule (2) and (3) deleted and existing sub-rules (4),(5),(6),(7), and (8) re-numbered as (2), (3),(4),(5) and (6) by G.N. of 25-11-1998, (1999 M.G.G.Pt. IV-C,p 1337) Prior to its deletion sub-rule (2) and (3) as under-

2. These words and figures were substituted for the word and figures “sub-rule (1) and (2)” by G.N. of 25-11-1998, (199 M.G.G Pt. IV-C, p. 1337),

[(2) *Every application for issue of a direction, order or writ under Article 226 of the Constitution (other than an application for a writ of Habeas Corpus) shall if the matter in dispute is or has arisen out of any other order passed or omission to pass any order by any authority and arising substantially with in Greater Bombay shall be heard and disposed of by such one of the Judges sitting on the Original Side as the Chief Justice may appoint.*

(3)*Every application for the issue of a direction, order or writ under Article 226 of the Constitution (other than an application for a writ of Habeas Corpus) shall if the matter in dispute is or relates to the challenge to the validity of any statute or any rules or regulations made there under and*

arising substantially within Greater Bombay shall be heard and disposed of by a Division Bench to be appointed by the Chief Justice.]

¹[(3)] Rule 42 applicable to plaints shall except otherwise provided for in this Chapter, apply *mutatis mutandis* to petitions under this Chapter.

¹[(4)] The Petitioner shall annex to his petition a list of all documents in support of the relief, including interim reliefs, prayed for in the Petition and shall also separately annex as exhibits, copies of such documents as are in English or where any such documents are not in English, typed copies of translations in English to such documents. Any translation other than official translations annexed to the Petition shall be either certified to be true by the Advocate for the petitioner or supported by an affidavit of the petitioner affirming that the translations are true.

¹[(5)] An application under ²[sub-rule (1) (a) and 1(b)] above shall be by Petition setting out therein the relief sought and the grounds on which it is sought. The Petition shall be supported by an affidavit. In every such Petition the Petitioner shall state whether he has made any other application to the Supreme Court or the High Court in respect of the same matter and how that application has been disposed of. The petitioner shall move for a rule *nisi* in open Court.

¹[(6)] If the petitioner makes an application to the Supreme Court in respect of the same matter during the pendency of the petition in the High Court, he shall forthwith bring this fact to the notice of the High Court by filing an affidavit in the case and shall furnish a copy of such affidavit to the other side.

The Court may adjourn the hearing of the application made to it pending the decision of the Supreme Court in the matter.

1. Sub-rule (2) and (3) deleted and existing sub-rules (4),(5),(6),(7) and (8) re-numbered as(2), (3),(4) (5) and (6)by G. N.of 25-11-1998, (1999 M.G.G. Pt. IV-C, p. 1337).

2. These words were substituted by G.N. Of 25-11-1998, (1999 M.G.G. Pt. IV-C, p. 1337)

637. Rule *Nisi* – The Court may either summarily dismiss the petition or order a rule *nisi* to be issued against the respondent, as it thinks fit. Any rule so granted shall be made returnable on such day as the Court may direct, but ordinarily it shall not be made returnable within less than fourteen days after service thereof on the respondent.

638. Deleted.

639. Interim Order – If the Court grant a rule, it may make such interim or interlocutory order in the case, either unconditionally or upon such terms and conditions as the Court thinks just, as the nature and circumstances of the case may require.

640. Service of copy of petition and documents on Respondent when interim orders prayed for – (1) Where the petitioner desires to obtain interim orders (whether by way of injunction or stay or in any other manner), he shall furnish a copy of such petition including all documents in support of the plea for such interim orders to the party against whom such petition is filed or proposed to be filed. Such copies shall be furnished one clear day before the day on which application for interim order is made. The petitioner shall also by a notice inform the party against whom such petition is filed or proposed to be filed, the date and time when he desires to apply for interim orders and file in Court, an affidavit of having served such a notice and having furnished copies of documents as stated above.

(2) The Court may, for sufficient reasons, dispense with the requirements of sub-rule (1) above.

¹(3) The Provisions of Section 148-A of the Code of Civil Procedure, shall not be applicable to the Writ Petitions filed under Article 226 of the Constitution of India.

1. Insert Notification No. P.3603/2021, dated 12th May 2021. published in M.G.G. 2021, Extra Ord., Part IV-C dt. 19-05-2021

641. Service of rule *nisi* - The rule *nisi* granted as above shall, along with a copy of the petition and of the order, if any, made under the last preceding rule, be served on the respondent in the manner prescribed for service of a writ of summons upon a defendant in a suit.

642. Answer to the petition – An answer to the petition shall be made by filing an affidavit in reply and serving a copy thereof upon the petitioner or his Advocate on record at least four days before the returnable date of the rule.

643. Service of rule on other parties – The Court may in its discretion, at any time before a final order is made on the application, order the rule *nisi* to be served on any person likely to be affected by any order which the Court may make in the matter. The provisions contained in the last two preceding rules relating to service of the petition and the rule *nisi* and the filing and service of an affidavit in reply shall apply to such a case.

644. The Court may allow outsider to appear in certain cases – If any person who is not a party to the proceeding desires to be heard on the application and it appears to the Court that he has a substantial interest in the dispute or the question to be decided therein and is a proper person to be heard, the Court may allow him to appear on such terms and conditions as it thinks proper. The Court may make such order with regard to costs occasioned by his appearance as the Court deems fit.

645. No further affidavits allowed – No further affidavit or affidavits shall be filed by any party, except with the leave of the Court.

646. Adjournment for examination of witnesses – If it appears to the Court that any material question of fact is in issue, the Court may allow oral testimony of witnesses to be taken and for that purpose may adjourn the hearing of the rule to some other date. In such a case either party may obtain summonses to witnesses, and the procedure in all other respects shall be similar to that followed in a suit.

647. Execution of orders - Every order made under this Chapter shall be executed, as if it were a decree made in the exercise of the Ordinary Original Civil Jurisdiction of this Court.

648. Costs of appeals may be quantified – The costs of appeals against order made under this chapter shall be in the discretion of the Court and the Court shall have power to quantify them.

¹**[648-A. Provisions of Rules 986 and 133 to apply to application under this Chapter.** – The provisions of Rules 986 and 133 of these rules shall, *mutatis mutandis* apply to applications filed under this Chapter].

1. Rule 648A was inserted by G.N.No.G/Amend/4504 dated 22-06-1992, pub. In MG.G. Pt. IV-Ka, p. 386

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