

CHAPTER LII

APPEALS

876. Appellate Court – The Chief Justice may, from time to time, constitute a bench of not less than two Judges (in this and the next succeeding chapter referred to as “the Appellate Court”) to hear appeals and applications in appeals from decrees or orders passed by Judges exercising Original Jurisdiction of the High Court.

¹**[877. Memorandum of Appeal** – A memorandum of Appeal shall be in Form No. 90 and Rules 42, 50 and 53 as to Plaints shall, so far as applicable and with any necessary modifications, apply to Memoranda of Appeal.]

1. Rule 877 was substituted by G.N.No. G/Amend/3047, dated 18-4-92 Pub. In. M.G.G. Pt. Iv-Ka, p. 372.

878. Copy of decree or order need not accompany Memorandum of appeal. – The memorandum need not be accompanied by a copy of decree or order appealed from nor of the judgment, but such decree or order shall be filed before the day fixed for the hearing.

879. Court may dismiss appeal without notice to respondent – (1) All appeals shall be place in the first instance for hearing the appellant in person or his Advocate, before a Bench of the High Court to be appointed by the Chief Justice and the Court, after hearing the appellant in person or his Advocate, if he appears on that day, may dismiss the appeal without directing notice to issue on the respondent.

(2) If the Appellate Court does not dismiss the appeal under sub-rule (1) above, it shall direct a notice to issue to the respondents.

880. Deleted

881. Prothonotary and Senior Master to accept memorandum – The Prothonotary and Senior Master is empowered to accept and take on file a memorandum of appeal if Rule 877 has been complied with, and it appears to him to have been presented within the time allowed by the law of limitation.

882. Endorsement of rejection - If the memorandum of appeal is rejected by the Prothonotary and Senior Master, he shall endorse thereon the date of its presentation and rejection and shall, if requested by the appellant, place it before the Appellate Court for orders.

883. Application for acceptance of rejected memorandum - Application for the acceptance of a memorandum of appeal rejected by the Prothonotary and Senior Master shall be made to the Appellate Court at the earliest opportunity.

The Appellate Court, on hearing such application, shall accept or reject the memorandum of appeal with or without notice to the other side. If accepted, it shall be accepted as of the date of its presentation to the Prothonotary and Senior Master.

884. Deleted.

885. Application for leave to appeal as an indigent person – Every application for leave to appeal as an indigent person shall be made by petition, setting out concisely in separate paragraphs the facts. A schedule of the petitioner's property shall be annexed thereto. The petition shall be presented to the Prothonotary and Senior Master, who will ascertain whether it has been presented within the period prescribed by the law of limitation and whether the provision of the Code of Civil Procedure with respect to such applications have been complied with, If the petition has been presented within the prescribed period and the provisions of the Code of Civil Procedure have been complied with, the Prothonotary and Senior Master shall endorse on the petition the date of its presentation and place it with necessary papers before the Appellate Court for disposal

886. Acceptance of petition subject to inquiry in respect of indigent person - The Appellate Court may accept the petition and allow petitioner to appeal as an indigent person, subject to an inquiry into his claim that he is an indigent person in the manner provided for such inquiry when a person applies for leave to sue as an indigent person:

Provided that if the petitioner as allowed to sue or defend as an indigent person, no further inquiry in respect of claim that he is an indigent person shall be held unless the Appellate Court see cause to direct such inquiry

887. Appeal to be placed for dismissal on failure to serve notice of appeal - The Appellant shall apply and take out and serve notice of the appeal on the Respondent within 15 days from the date of the Order directing notice to issue on the Respondent under Rule 879 above, unless otherwise ordered. On his failing to do so, the Prothonotary and Senior Master may set down the appeal on the board for dismissal.

888. Application for notes of evidence – The appellant shall on the acceptance of his memorandum of appeal apply to the Prothonotary and Senior Master for a copy of the notes of evidence and other necessary documents and shall prepare the appeal paper book without delay.

889. Appellant to lodge index of the appeal paper book – The appellant shall prepare and lodge in the office of the Prothonotary and Senior Master within fifteen days from the service of the notice of appeal an index of the documents to be included in the appeal paper book and shall apply to the Prothonotary and Senior Master to appoint a time to settle the index. Notice of the time so appointed shall be given by the appellant to the respondent or his Advocate on record.

890. Settlement of index – The Prothonotary and Senior Master shall settle the index and shall decide how many copies of the appeal paper book shall be prepared by the appellant.

891. Party aggrieved may apply to Judge – If a party is not satisfied with the index as settled by the Prothonotary and Senior Master, he may apply to the Judge in Chambers

892. Contents of appeal paper book where appeal is from a decree –
(1) When the appeal is from a decree, the appeal paper book shall contain the following papers arranged in two parts in the same volume where practicable in the following order:-

PART – I

- (a) Pleadings.
- (b) Issues.
- (c) Depositions of witnesses examined on behalf of the plaintiff, including depositions taken *de bene esse*, or on commission, if admitted in evidence at the hearing.
- (d) Depositions of witnesses examined on behalf of the defendant including deposition, taken *de bene esse*, or on commission, if admitted in evidence at the hearing.
- (e) Judgment of the trial Court.
- (f) Decree of the trial Court.
- (g) Memorandum of appeal.
- (h) Cross-objections, if any, under Order XLI, Rule 22 of the code of Civil Procedure.

PART – II

- (a) Exhibits and documents put in on behalf of the parties respectively.
- (b) Any document rejected by the trial Court where its rejection is a ground of appeal or cross-objection.
- (c) Such other documents as the Prothonotary and Senior Master may direct on notice to the parties.

(II) The index to Part I shall be in chronological order, and shall be placed at the beginning of the volume.

The index to Part II shall follow the order of the exhibit mark, and shall be placed immediately after the index to Part I

(III) Part I shall be arranged strictly in chronological order, i.e., in the same order as the index.

Part II shall be arranged in the most convenient way as the circumstances of the case require. The documents shall be arranged as far as possible in chronological order, mixing plaintiff's and defendant's documents together when necessary. Each documents shall show its exhibit mark, and whether it is a plaintiff's or defendant's document (unless this is clear from the exhibit mark) and in all cases documents relating to the same matter, such as-

- (a) a series of correspondence, or
- (b) proceedings in a suit, other than the one under appeal, shall be kept together.

The proper page number of each document shall be inserted in the index.

The appellant will be responsible for arranging the record in proper order.

- (IV) The documents in Part I shall be numbered consecutively.

The documents in Part II shall not be numbered, apart from the exhibit mark

- (V) Each document shall have a heading which shall consist of the number or exhibit mark and the description of the document in the index, with the date.

- (VI) Each document shall have a heading which shall be repeated at the top of each page over which the document extends, viz:-

PART – I

- (a) Where the case has been before more than one Court, the short name of the Court shall first appear. Where the case has been before only one Court, the name of the Court need not appear.
- (b) The heading of the document shall then appear consisting of the number and the description of the document in the index, with the date, except in the case of oral evidence.
- (c) In the case of oral evidence, “Plaintiff’s evidence” or “Defendant’s evidence” shall appear next to the name of the Court, and then the number in the index and the witness’s name, with “examination”, “cross-examination”, or “re-examination”, as the case may be.

PART - II

The word “Exhibits” shall first appear and next to it the exhibit mark and the description of the document in the index with the date.

Sufficient space shall be left after the heading to distinguish it from the rest of the matter appearing on the page.

(VII) Formal and irrelevant documents shall be omitted, but the description of any document may appear both in the index and in the Record, if desired by any party, with the words ‘not included’ against it.

A long series of documents such as accounts, rent rolls inventories, etc., shall not be set out in full, unless counsel so advice, but short extracts shall be set out as specimens.

(VIII) In cases where maps are of an inconvenient size or unsuitable in character, the appellant shall, in agreement with the respondent, prepare from the materials maps drawn properly to scale and of reasonable size, showing, as far as possible, the claims of the respective parties in different colours.

In case of difference between the appellant and the respondent or their respective Advocates on record as to the inclusion of

documents in the paper book, including the question whether any documentary exhibit such as a title deed should be set out in *extenso* or not, such questions shall be settled by the Prothonotary and Senior Master at a meeting to be held before him.

893. Contents of appeal paper book in other cases – In the case of other appeals, the appeal paper book shall contain such papers as were used by the parties at the hearing or as the Prothonotary and Senior Master may direct.

894. Number of documents of similar nature – When a number of documents in one form have been put in evidence, whether as one exhibit or not, it shall not be necessary to include more than one document but reference to the others may be made in the appeal paper book by giving such particulars as to date or otherwise as may be necessary to show in what respect they differ from the one included.

895. Appeal paper book – The appeal paper book shall be typed or cyclostyled, but the Prothonotary and Senior Master may, on the application of any party, direct that the appeal paper book be printed.

896. Style and size of appeal paper book when typed or cyclostyled – When the appeal paper book is typed or cyclostyled, it shall be legibly typed or cyclostyled on durable foolscap paper or other paper similar to it in size and quality and with an inner margin of about three and a half centimeters wide. It shall be written up on both sides of each leaf with double spacing.

897. Style and size of appeal paper book when printed – When the appeal paper book is directed to be printed, it shall be printed in accordance with the following directions:-

- (a) The appeal paper book shall be printed in the form known as Demi-Quarto (i.e. 54 ems in length and 42 in width) and on both sides of each leaf with single spacing.
- (b) The size of the paper used shall be such that the sheet, when folded and trimmed, will be about twenty-eight centimeters in height and twenty-one centimeters and a half in width

- (c) The type to be used in the text shall be Pica type; but Long Primer shall be used in printing accounts, tabular matter and notes. Every tenth line shall be numbered in the margin.

898. English translation – Only the English translation of any documents not in the English language shall be entered in the appeal paper book.

899. Maximum printing charge for twelve copies – Where the appeal book is directed to be printed, the maximum charge to be allowed to a party for prints not exceeding twelve shall be Rs. 10 per page of 47 lines of running solid matter, Rs. 12 for every page of tabular matter, and Rs. 13 for genealogical tables. The full charge shall be allowed, although the printed matter to be printed on any page is not sufficient to occupy a full page.

900. Charges to be allowed for more than twelve copies – In cases where more than twelve appeal paper books are required, the appellant shall get such additional paper books printed. The charges to be allowed to a party in such a case shall be 15 paise per page for each additional paper book printed.

901. Delivery of appeal paper books to respondent on payment of proportionate charges – The appellant shall, without delay, deliver to each respondent as many copies as he shall have applied for on payment by him of such proportion of the typing, cyclostyling or printing charges as the number of copies furnished to him bears to the total number of books prepared.

902. Time for filing appeal paper books – The appellant shall be responsible for the preparation of the appeal paper book and shall file two copies of the appeal paper book in the Prothonotary and Senior Masters office at least six days before the day fixed for the hearing of the appeal.

²[Provided, however, where the appeal paper book has been directed to be printed under Rule 895, the Appellant shall file 10 extra copies of the appeal paper book in the Prothonotary and Senior Master's Office].

2. Proviso was inserted by G.N. No. G/Amend/4504, dated 22-6-1992, Pub. In M.G.G. Pt. IV-Ka, p.386

903. Omission to file appeal paper books – In the event of non-compliance with the last preceding rule, the respondent may, with the leave of the Court, prepare and file the appeal paper books, or he may apply, by Notice of Motion, to have the appeal dismissed for want of prosecution or for such other order as he may be advised.

904. Interlocutory applications in appeals – Every application under the rules in this chapter and for stay of execution where appeals are pending shall be made by Notice of Motion to the Appellate Court:

Provided that all matters which are under the Original Side rules dealt by a Judge in Chambers pending the suit shall also be dealt by the Judge in Chambers on the Original Side pending an appeal, unless otherwise ordered by the Appellate Court; and

Provided further that pending the hearing of an appeal, an interlocutory urgent application therein during the vacations and the Christmas Holidays may be made to any two Judges available in Bombay, including, the Judge who made the order.

905. Application for a Bench when Appellate Court not sitting – If the Appellate Court shall not be sitting, the applicant shall give notice of the nature of his intended application to the Prothonotary and Senior Master who will communicate the same to the Chief Justice, so that a time may be fixed and a Bench may be appointed for the hearing of the application.

906. Rules 153 and 163 applicable to appeals – Rules 153 and 163 shall, with any necessary modifications, apply to postponement and dismissal or withdrawal of appeals.

907. When cross-objection under Order XLI, Rule 22 of C. P. Code may be treated as a cross appeal. – In case an appeal for any reason fails to come to hearing on the merits, any cross-objection filed under Order XLI, rule 22, of the Code of Civil Procedure may be treated as a cross-appeal on the application of the respondent by whom the same was filed on such terms as the Court may think fit.

908. Time for filing cross-objections under Order XLI, Rule 26 of C.P. Code – Cross-objections under Order XLI, rule 26 of the Code of Civil Procedure shall be filed within thirty days from the date on which the findings are recorded or within such further time as the Appellate Court may allow.

909. Payment of amount deposited for costs of appeal – When a respondent is ordered to pay the costs of an appeal, or when each party is directed to bear his own costs, the Prothonotary and Senior Master shall, unless otherwise directed, return to the appellant the amount deposited by him as security for the respondent's costs of appeal. When an appellant is directed to pay the respondent's costs of appeal, the Prothonotary and Senior Master shall, unless otherwise directed, pay the amount deposited with him as security for such costs or so much thereof as may be necessary, to the respondent in or towards payment of such costs, and shall return the balance (if any) to the appellant.
