

NOTIFICATION OF THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE / ORIGINAL SIDE

(For insertion in the Maharashtra Government Gazette, Part IV-C)

No.P3601/2013 – The Honourable the Chief Justice and the Judges of the Bombay High Court are pleased to direct that the following draft of the rules of the Bombay High Court proposed to be framed in exercise of the powers conferred by Section 2 of the Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of Letter Patent Appeals) Act, 1986 as amended by Maharashtra Act, No. XXVII of 2008 and all other powers enabling it in that behalf, is published as required by Section 24 of the Bombay General Clauses Act, 1904, for information of all persons likely to be affected thereby, and notice is hereby given that the draft will be taken into consideration by the Bombay High Court on or after 22 August 2013;

It is clarified that PART A and PART B of these draft Rules are to be inserted in place of existing Chapter I and Chapter XVII, Rules 1, 4, 17 and 18 of the Bombay High Court Appellate Side Rules, 1960 respectively and PART C is to be inserted in place of Rule 636(1)(a) of the Bombay High Court Original Side Rules, 1980.

Any objection or suggestion which may be received by the Chief Justice of the Bombay High Court with respect to the draft on or before the aforementioned date will be taken into consideration by the Bombay High Court.

PART A

PART I — CONDUCT OF BUSINESS

CHAPTER I

**JURISDICTION OF SINGLE JUDGES AND BENCHES OF
THE HIGH COURT**

1. Jurisdiction ordinarily exercised by Division Court of two Judges. -

(i) The Civil and Criminal jurisdiction of the Court on the Appellate Side shall, except in cases where it is otherwise provided for by these rules, be exercised by Division Court consisting of two or more Judges.

(ii) Notwithstanding anything contained in this Chapter, the Chief Justice may assign any matter or categories of matters, which can be disposed of by a Single Judge, to a Division Bench.

2. Matters disposed of by a Single Judge :-

Save as otherwise expressly provided by these rules, a Single Judge may dispose of the following matters :—

I. Civil —

(a) Appeals :-

(i) From original decree in suits or from adjudication in other proceedings from which appeals lie to the High Court as from original decrees, whether under the Civil Procedure Code or under any local or special Act, wherein the value of the subject-matter in dispute in the Court or before the Tribunal of the first instance does not exceed 50 lakh rupees and wherein the value of the subject-matter still in dispute on appeal is 50 lakh rupees or less : provided, however, that the expression 'the value of the subject-matter still in dispute on appeal' appearing in this sub-clause shall be construed to mean, where there is an appeal as well as a cross appeal or cross-appeals or cross-objections, the total of the values of the subject-matters in dispute in the

appeal as well as the cross-appeal or the cross appeals or the cross- objections;

(ii) From appellate decrees in suits or from adjudications in other proceedings from which appeals lie to the High Court as from appellate decrees, whether under the Civil Procedure Code or under any local or special Act;

(iii) From decrees under section 144 of the Code of Civil Procedure:

(iv) From orders under section 104 or Order XLIII, Rule 1 of the Code of Civil Procedure; and

(v) From orders under local or special Acts not having the force of a decree.

(b) Applications for the exercise of the Court's revisional jurisdiction under section 115 of the Civil Procedure Code or under section 25 of the Provincial Small Cause Courts Act, or under any special or Local Law excluding the petitions under section 51 of the Parsi Marriage and Divorce Act, 1936, arising out of decrees or orders passed by the Parsi Chief Matrimonial Court.

(c) Applications for the withdrawal of appearance or cancellation of the vakalatnama or for deposit or withdrawal of moneys and for refund of Court Fees.

(d) Applications under the Companies Act, 1956, and proceedings thereunder.

(e) All other applications incidental to or interlocutory or arising out of or relating to the appeals or civil revisional applications pending or proposed to be Filed in the High Court and also applications for withdrawal of appeals or applications for consent decrees or orders under Order XXIII, Civil Procedure Code.

(f) Revision of orders passed by the Registrar, Deputy Registrar, Assistant Registrar or the Special Officer in those appeals or petitions which are to be dealt with by a Single Judge under these rules.

II. Criminal—

(a) Appeals against convictions, except in which the sentence of death or imprisonment for life has been passed appeals against acquittals wherein the offence with which the accused was charged is one punishable on conviction with a sentence of fine only or with a sentence of imprisonment not exceeding ten years or with such imprisonment and fine, and appeals under section 377 of the Code of Criminal Procedure, revision applications and Court notices for enhancement of sentence for offences punishable on conviction with sentence of fine only or with sentence of imprisonment not exceeding ten years or with such imprisonment and fine.

(b) Appeals against orders relating to disposal of property and orders directing payment of compensation, expenses and/or fees or orders binding over the accused to appear and receive sentence at any time the accused may be called upon and in the meanwhile to be of good behaviour or admonishing the accused.

(c) Applications for the exercise of the Court's revisional jurisdiction under section 401 of the Code of Criminal Procedure, and reports of cases of which record is called for on examination of criminal returns or otherwise.

(d) Applications for leave to appeal under section 378(4) of the Code of Criminal Procedure against acquittals wherein the offence with which the

accused was charged is one punishable on conviction with a sentence of fine only or with a sentence of imprisonment not exceeding ten years or with such imprisonment and fine.

(e) Application for bail or stay, not arising in or out of or relating to any appeal or application already pending in the High Court.

(f) Application for leave to appeal to the Supreme Court under Article 134 of the Constitution of India in matters disposed of by a single Judge.

(g) All miscellaneous applications, including applications for bail or stay in or out of or relating to matters under items (a) to (c) above.

(h) All applications under section 482 of the Code of Criminal Procedure including applications challenging an Order for issuing process in a private complaint, except -

(i) applications seeking review, modification or setting aside of any order passed by a Division Bench

(ii) applications for quashing an F.I.R., C.R. , Charge Sheet or order directing investigation under Section 156(3) of the Cr.P.C. irrespective of whether such applications have been filed under Section 482 simpliciter or read with Article 226 and/or Article 227 of the Constitution.

(i) Application/petitions for furlough or parole under Prison (Bombay Furlough and Parole) Rules, 1959 or under the (Prison Goa, Daman and Diu Furlough and Parole) Rules, 1968 or for temporary bail in the matter pending before Division Bench or a Single Judge shall be placed, before the respective

fora. Applications/petitions of aforesaid nature arising out of matters already¹⁸ disposed of shall be placed before the Single Judge assigned with criminal matters.

3. 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 the nature thereof passed under that statute shall be heard by a Division Bench hearing first appeals.

4. All the appeals from Orders or Judgments of the Family Court to the High Court, dealt with under the Family Courts Act, 1984 including the Orders in proceedings under Chapter IX of the Code of Criminal Procedure shall be heard by the Division Bench hearing First Appeals.

5. Matters to be dealt with by a Single Judge during vacations and holidays —

Notwithstanding anything contained in these Rules, a single Judge, may, during Vacation or on Holidays or on Working days when the Division Court is not in Session issue notice as the case may be, in any matter of an emergent nature, civil or criminal or under the Constitution, and may pass such interim orders regarding stay, Injunction, bail and other interim reliefs as he may deem fit.

6. 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.

7. 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 or has for the time being ceased to sit at Bombay, Nagpur, Aurangabad or Goa, as the case be (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 Judge have ceased to be the Judge of the High Court or have ceased to sit at Bombay, Nagpur, Aurangabad or Goa, as the case be, 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 provisos 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.

PART B

CHAPTER XVII

**PETITIONS UNDER ARTICLES 226 AND 227 AND APPLICATIONS
UNDER ARTICLE 228 OF THE CONSTITUTION AND RULES FOR
THE ISSUE OF WRITS AND ORDERS UNDER THE SAID ARTICLES**

1. (i) Applications for issue of writs, directions, etc. under Article 226 of the Constitution —

Every application for the issue of a direction, order or writ under Article 226 of the Constitution shall, if, the matter in dispute is or has arisen substantially outside Greater Bombay, be heard and disposed of by a Division Bench to be appointed by the Chief Justice. The application shall set out therein the relief sought and the grounds on which it is sought. It shall be solemnly affirmed or supported by an affidavit. In every such application, the applicant 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.

(ii) Applicant to inform Court, if, during pendency of an application, the Supreme Court has been approached —

If the applicant makes an application to 'the Supreme Court in respect of the same matter during the pendency of the application 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.

(iii) Hearing may be adjourned pending decision by Supreme Court —

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

4. Division Bench to dispose of the application; rule *nisi* may be granted by a Single Judge —

Applications under Rule I shall be heard and disposed of by a Division Bench; but a single Judge may grant rule *nisi*, provided that he shall not pass any final order on the application.

17. (i) Applications under Article 227 and 228 —

An application invoking the jurisdiction of the High Court under Article 227 of the Constitution or under Article 228 of the Constitution, shall be filed on the Appellate Side of the High Court and be heard and disposed of by a Division Bench to be appointed by the Chief Justice. The application shall set out therein the relief sought and the grounds on which it is sought. It shall be solemnly affirmed or supported by an affidavit. In every such application, the applicant 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 is disposed of.

(ii) Applicant to inform Court, if, during pendency of an application, the Supreme Court is approached —

If the applicant makes an application to the Supreme Court in respect of the same matter during the pendency of the application 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.

(iii) Hearing may be adjourned pending decision by the Supreme Court —

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

(iv) Rules 2 to 16 to apply *mutatis mutandis* —

Provisions of Rules 2 to 16 above shall apply *mutatis mutandis* to all such applications.

18. Single Judge's powers to finally dispose of applications under Article 226 or 227—

Notwithstanding anything contained in Rules 1,4 and 17 of this Chapter, applications under Article 226 or under Article 227 of the Constitution (or applications styled as applications under Article 227 of the Constitution read with Article 226 of the Constitution) arising out of---

- (1) The orders passed by the Maharashtra Revenue Tribunal under any enactment;
- (2) The orders passed by any Authority or Tribunal (other than the Maharashtra Revenue Tribunal) under the Bombay Tenancy and Agricultural Lands Act, 1948. or the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, the Hyderabad Tenancy and Agricultural Lands Act. 1950 or Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961;
- (3) The decrees or the orders passed by any Subordinate Court or by any quasi Judicial Authority in any suit or proceeding (including suits and proceedings under any Special or Local Laws), but excluding those arising out of the Parsi Chief Matrimonial Court and orders passed under the Recovery of Debts Due to Banks and Financial Institutions

Act, 1993; the Administrative Tribunals Act, 1985; the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Maharashtra Scheduled Castes, Scheduled Tribes, De notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000;

- (4) The orders and decisions of the Courts constituted under the Code of Criminal Procedure, except the applications for quashing an F.I.R., C.R. Charge Sheet or an order directing investigation under Section 156(3) of the Cr.P.C. irrespective of whether such applications have been filed under Section 482 simpliciter or read with Article 226 and/or Article 227 of the Constitution;
- (5) The decrees or the orders passed by any Subordinate Court in appellate or revisional proceedings arising from suits or proceedings mentioned in Clause (3) above, or
- (6) The orders passed by any authority under the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 or the Central Provinces and Berar Letting of Houses and Rent Control Order, 1948 or the Hyderabad House (Rent, Eviction and Lease) Control Act, 1954;
- (7) The orders passed under the Maharashtra Housing and Areas Development Act, 1976 and under the enactments repealed by the said Act;
- (8) The orders passed by the Tribunal constituted under the Nagpur Improvement Trust Act, 1936;
- (9) The orders passed under the Maharashtra Slum Areas (Improvements, Clearance and Re-Development) Act, 1971;
- (10) The orders passed under the Industrial Disputes Act. 1947
- (11) The orders made in applications under the Bombay Industrial Relations

- Act, 1947;
- (12) The orders passed under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974;
 - (13) The orders passed under the Maharashtra Co-operative Societies Act, 1961;
 - (14) The orders passed under Chapters VI and VII of the Maharashtra Recognition of Trade Unions and Prevention of Unfair labour Practices Act, 1972;
 - (15) The orders passed by the Appellate Authority under the Beedi and Cigar Workers (Conditions of Employment) Act, 1966;
 - (16) The orders passed under the Payment of Gratuity Act, 1972;
 - (17) The orders passed under the Workmen's Compensation Act, 1923;
 - (18) The orders passed under the Payment of Wages Act. 1936;
 - (19) The orders passed under the Minimum Wages Act, 1948;
 - (20) The orders passed under the Bombay Prohibition Act, 1949;
 - (21) The orders passed under the Maharashtra Land Revenue Code, 1966;
 - (22) The orders passed under the Bombay Stamp Act, 1958;
 - (23) The orders passed under the Bombay Police Act, 1951;
 - (24) The orders passed under the Bombay Shops and Establishments Act, 1948;
 - (25) The orders passed under the Bombay Port Trust Act, 1879;
 - (26) The orders passed under the Bombay City (Inami and Special Tenures) Abolition and Maharashtra Land Revenue Code (Amendment) Act, 1969;
 - (27) The orders passed under Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;
 - (28) The orders passed under the Displaced Persons (Compensation and Rehabilitation) Act. 1954;

- (29) The orders passed under the Electricity (Supply) Act, 1948;
- (30) The orders passed under the Employees' Provident Funds and Misc. Provisions Act, 1952;
- (31) The orders passed under the Employees' State Insurance Act, 1948;
- (32) The orders passed under the Factories Act, 1948;
- (33) The orders passed under the Indian Railways Act, 1890;
- (34) The orders passed under Section 3 the Electricity Act, 2003;
- (35) The orders passed under the Motor Vehicles Act, 1939;
- (36) The orders passed under the Minimum Wages Act, 1948;
- (37) The orders passed under the Major Port Trust Act, 1963;
- (38) The orders passed under the Merchant Shipping Act, 1958;
- (39) The orders passed under the Wireless Telegraphy Act, 1933;
- (40) The orders passed under the Registration Act, 1908;
- (41) The orders passed under the Maharashtra Universities Act, 1994;
- (42) The orders passed under the Maharashtra Employees of Private Schools(Conditions of Service) Regulation Act, 1977;
- (43) Orders passed under Bombay Primary Education Act, 1947 (Bombay Act No. LXI of 1947);
- (44) Orders passed under the Land Acquisition Act, 1894 for acquiring land for re-settlement of the Project affected Persons in accordance with the provisions of Maharashtra Resettlement of Project Displaced Persons Act, 1976 (Mah. Act No. XLI of 1976) or Maharashtra Project Affected Persons Rehabilitation Act. 1986 (Mah. Act No. XXXII of 1986);
- (45) Orders passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971;
- (46) Orders passed under Bombay Public Trusts Act, 1950,
may be heard and finally disposed of by a Single Judge 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 regulations made thereunder, such application shall be heard and disposed of 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 1 to 46 or any Clause that may be added hereinafter to, a Division Bench,

Provided also that all petitions/applications under Article 226 and/or 227 of the Constitution of India arising out of or relating to an order of penalty or confiscation or an order in the nature thereof or an order otherwise of a penal character and passed under any special statute shall be heard and decided by a Division Bench hearing Writ Petitions.

Explanation – The expression “order” appearing in clauses (1) to (46) means any order passed by any judicial or quasi judicial authority empowered to adjudicate under the above mentioned statutes.

PART C

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 VII 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 orders 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,
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 (xxxvi) means any order passed by any Judicial or quasi-judicial Authority empowered to adjudicate under the above mentioned statutes.

HIGH COURT OF JUDICATURE AT)
BOMBAY)
Date : 13th August 2013)

Sd/-
(**C.V. BHADANG**)
Registrar General