

Hon'ble Mr. Justice Altamas Kabir has been pleased to direct that whenever an application is filed by the petitioner-in-person in any matter listed / to be listed before the Bench presided over by His Lordship, seeking permission to appear and argue the case in-person, such application shall, at the first instance, be placed before concerned Registrar to interact with the petitioner-in-person and give opinion by way of office report whether the petitioner-in-person will be able to argue and address the Court in appropriate manner and will be able to give the necessary assistance to Court for proper disposal of the matter.

The above directions be carried out by all concerned without fail.

Ld. Registrar (J-II)
Ld. Registrar (J-III)
Ld. Registrar (Misc.)
Ld. Registrar (Admn. G)
Additional Registrar / Deputy Registrar (Judicial Sections)
Additional Registrar (I-B)
Additional Registrar (Listing)
Deputy Registrar (DEB)
Deputy Registrar (Mentioning)
Assistant Registrar (Listing)
Assistant Registrar (cc)

Copy for information:

Ld. Secretary General

Ld. Registrar (cc)

Ld. Registrar (Admn. M)

(Ravindra Maithani)
Registrar (Judicial-I)

30.07.2012

seen

31.7.12

SUPREME COURT OF INDIA


F.20/Judl./2009

Dated 5th May, 2009OFFICE ORDER

The following instructions are issued with the prior approval of the competent authority for strict compliance by all concerned :

1. If any party-in-person or the Authorised Representative of an organization which is not represented by a counsel, wants to file any fresh matter or any affidavit or document in his pending matter before this Hon'ble Court, he/she be required to file the same at the counter provided in the Porta Cabin and be informed that further action in their matter will be conveyed to them in writing. If he/she wants to have some information about his case or any application pending in the Hon'ble Court/Registry, the Additional Registrar, in-charge of Security may requisition the services of the P.R.O. who may collect the necessary information from the concerned Section and furnish the same to the parties-in-person. Such a person may not be allowed to enter High Security Zone, without permission in writing from Registrar(AJ).
2. If a party-in-person including the representative of an organization which is not represented by an Advocate satisfies the Additional Registrar in-charge of Security that a matter, in which he/she, or the organization which he/she represents is a party, is listed before the Hon'ble Court on a particular day, then he/she be permitted to go only to that Court accompanied by appropriate security personnel.

All concerned


(T. Sivadasan)
Registrar (Judl.)


In-personSUPREME COURT OF INDIA

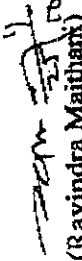
F. No. 38/Judl./2010
Dated: November 25, 2010


OFFICE ORDER

After taking into consideration the difficulties experienced by the Branch Officers of the Judicial Sections in regard to the defect curing in the matters of parties-in-person at the Filing Counter by the Dealing Assistants of the concerned Judicial Sections and requisitioning of records of the consigned matters by the concerned Judicial Sections from the Record Room to be sent to the Copying Section for issue of certified copies, the competent authority has been pleased to direct as under: -

- (1) Where the defects are pointed out to the petitioner-in-person at the Filing Counter and he rectifies them there and then or on a subsequent day, the Filing Counter generates the Dgfly number of the case and processes it further after registering the same. However, in cases where the defects are pointed out to the petitioner-in-person but he does not rectify them for some time, the file shall be sent to the concerned Section for pointing out these defects to him in writing as per the present practice. When the petitioner-in-person approaches the Registry for removing the defects in that petition, he shall contact any officer/ official at the Filing Counter (which shall be made known to him in writing) who shall immediately call the relevant file from the concerned Section and get the defects rectified at the Filing Counter itself.
- (2) The record of the consigned matters for the issue of certified copies, etc., shall be straightaway requisitioned by the Copying Section from the Record Room without the help of parent Section.


(Subhash Malik)
Registrar (Judicial-III)
25.11.2010


(Ravindra Maithani)
Registrar (Judicial-II)
25.11.2010


(M. K. Hájura)
Registrar (Judicial-I)
25.11.2010

Copy to: All concerned.

As per Note dated 09.11.2009 received from the Court Masters attending the court of Hon'ble the Chief Justice of India, it has been directed as follows: -

Permission granted

"Whenever Petitioner-in-person files a petition and wants to appear and argue in-person, he/she should first file an application along with the petition seeking permission to appear and argue the case in-person."

Permitted

If the application is allowed then only he/she will be permitted to appear and argue the case in-person."

In this connection, reference is made to Rule 1 of Order IV of the Supreme Court Rules, 1966, which reads as under: -

"Subject to the provisions of these rules only those advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 (25 of 1961) as amended shall be entitled to appear and plead before the Court:

Provided that the Court may, if for any special reason it thinks desirable to do so, permit any other person to appear before it in a particular case."

The above direction may be noted for compliance without fail by all officers in-charge of the judicial Sections.

Ld. Registrar (J-II)

T. Sivadasan

(T. Sivadasan)
Registrar (Judicial)
12.11.2009

All the Additional Registrars and Deputy Registrars in-charge of judicial sections

633 118
1-812

S

A



The Advocates' Association of Western India

Room No. 36, 1st Floor, High Court, Mumbai - 400 032.

Tel. No. 2267 3617 / 2267 3072 / 2267 5690

Date : 02/08/2012

To,

The Chairman,
Rule Committee,
Registrar General,
High Court, Bombay.

Sub :- Suggestions / Objections to the Unified Rules.

Sir,

I am forwarding herewith the Suggestions / Objections submitted by members of A. A. W. I. for your kind consideration. In the Special General Meeting held by our Association on 01/08/2012 number of Advocates requested the A. A. W. I. Committee to seek more time so that the more members can submit said Suggestions / Objections to High Court Unified and Revised Rules.

May I request you to consider the request.

Thank you.

Yours Sincerely,

Rajiv Patil
President
A. A. W. I.

Reg (copy)

Reg. Gen.

318/12

5800/12
23.8.2012

6
MILIND M. SATHAYE,
Advocate, High Court, Mumbai
Office No. 14, 1st Floor - Mezzanine,
32, Raja-bahadur Mansion,
Ambalal Doshi Marg (Hamam Street), Fort, Mumbai.
Phone : (022) 22633179

2

Date : 1st August 2012

To :

The Hon. Secretary,
Advocates Association of Western India,
High Court Mumbai


Subject : Suggestions to Proposed Unified & Revised Rules applicable to both
Appellate and Original Side of Hon'ble High Court, Bombay.

Sir,


With utmost respect to the High Court Rules Review Committee, my
suggestions based on my limited understanding of the matter, are as under :

1) About Part I – General (Chapters 1 to 16):

- a. Requirement of wearing Coat as per Rule 2.24 should be removed. In a place like Bombay where almost throughout year, weather is humid, sticking to requirement of Coat is unnecessary.
- b. Requirement of giving notice to Opposite parties as per Rule 6.2 & 6.7 is not possible in every Appellate Side matter, where, in many cases, the opposite side resides or works for gain at remote places including padas, villages and talukas. At the most proof of dispatch of notice can be produced but actual notice


MILIND M. SATHAYE,

Advocate, High Court, Mumbai
Office No. 14, 1st Floor - Mezzanine,
32, Raja-bahadur Mansion,
Ambalal Doshi Marg (Hamam Street), Fort, Mumbai.
Phone : (022) 22633179



may not be possible every time. Although Court's power of passing ex-parte order is saved in the same Rule, the use of word "shall" for "giving notice" may preclude many Appellate Side Interim Applications from moving and securing timely ad-interim or interim relief. If other side wishes to be heard, then he/she can always file Caveat u/s. 148A of the CPC. In absence of caveat, the other side by itself does not have a right to be heard at first hearing or admission. Primacy of CPC should be maintained here. This Rule may be implemented effectively in Bombay on Original Side but not on Appellate Side. This requirement of giving prior notice should be removed, at least for Appellate Side Matters.

c. Rule 6.6, on one hand, makes it mandatory (word used is "shall") to contain in the body of Application, a signed statement about compensation / damages for prejudicially affected parties; On the other hand, provides that Court may dispense with such undertaking. If undertaking is to be incorporated in the Application, when will the Court dispense with it? At the time of passing order, the statement will already be there. In any case, the Court is sufficiently empowered to pass orders of damages and compensation to prejudicially affected parties. That power is independent of any statement made or omitted by party. So also entitlement of prejudicially

- affected party to seek damages / compensation can not be left at the mercy of statement by Applicant. This rule should be removed.
- d. Bar created under Rule 6.9 is apparently against the principles of natural justice. There is no need to bar filing of affidavit in rejoinder. A diligent party should not be barred from filing such Rejoinder, if he/she is not delaying matter / not wasting time of the Court. If rejoinder is not filed till date of hearing, the Court can always refuse to grant further time. Said Rule should be removed.
- e. Rule 6.14(g) contemplates an order of Court not signed by the Judge. Such order will not be an Order. Said Rule needs to be reconsidered for proper wording.
- f. Rule 8.1 makes private notice applicable in each and every case. In cases where no interim relief is applied and matter is simply admitted or Rule is granted, private service may not be necessary. Every order of private notice is not only an additional financial burden on the litigant but also procedural burden on Advocates' infrastructure.
- g. About Rule 8.5 (c) with proviso (i) and (ii) : It is possible to create an email account or email id without furnishing all the details of account holder, such as full name, address, age, occupation etc. It is also possible to create an email id by

furnishing somebody else's particulars, without that person knowing it. It is also possible to create email id by submitting false name, false address, false age. In short, email id can be completely misleading. Hence, even-if a chain of email is shown to be existing, it should not be treated as good service upon ostensible email account holder. Said rule must put a rider that "Only where a particular email id is shown to be admitted by a party or where a particular email id is supplied by a party in the Lower Court proceedings as address to serve him, only then such chain of emails should be accepted"

h. Rule 8.10 should be removed in view of growing tendency of local authorities and even private mischievous litigants to resort to illegal activities near weekend (Saturday & Sunday), in order to frustrate any possible legal action by the aggrieved party.

i. Rule 8.13(a) requires the Advocate at whose instance, summons or other process is issued, to certify "whether the person to be served is conversant with English language ?" How in the world any Advocate can possibly know, so much so as to "certify it" that other side litigant is conversant with English Language ? This requirement in the said Rule should be simply removed.

j. In Chapter 11 about issuance of certified copies, apparently

Rule 11.9 does not include words : "Registrar or other Officer

duly Authorised by him". Plain reading of entire Chapter 11 shows no reference to any provision for issuing or supplying certified copies by Registrar. This is specially important from Appellate Side litigants' point of view.

2) About Part II - Jurisdiction : Chapters 17 to 21

- a. This entire part does not make reference to "Appellate Jurisdiction" at all. It recognises "Original" Jurisdiction and "Jurisdiction (Civil & Criminal) other than Original". So under the proposed Rules, filing on Appellate Side will be required to state "IN THE HIGH COURT OF JUDICATURE AT BOMBAY, CIVIL / CRIMINAL OTHER THAN ORIGINAL JURISDICTION". If the proposed Rules are to be applicable to both Original and Appellate Jurisdictions of the High Court, it is imperative to include and recognise "Appellate Jurisdiction" of the High Court. There is apparently no reason to exclude such reference, inclusion and recognition of "Appellate Jurisdiction". There is reference to "Appellate Side" elsewhere in the Rules e.g. see Rule 40.1 in Chapter 40.

3) About Part III - Chapter 22 (Filings Generally)

- a. Rule No. 22.2(d) is unnecessarily restrictive about number of pages (300 i.e. 150 leaves printed on both sides). In case the

impugned Judgment is more than 300 pages, does the Rule expect to break the impugned Judgment in 2 or more successive volumes ? The said restriction should be removed.

b. Rule No. 22.2(m)'s bar on use of "alphabets" for marking exhibits is unnecessary. In fact compulsion of numerical marking of exhibits (as proposed) is most likely to lead to confusion between "exhibit numbers" and "running page numbers" on exhibits. As far as possible such bars likely to lead to confusion should be avoided. The said bar should be removed.

c. Rule 22.2(o) is inconsistent with Rule 22.2(d), in so far as maximum number of pages permitted per volume is concerned. The earlier Rule 22.2(d) states 300 pages whereas the later Rule 22.2(o) states 200 pages. This restriction of 200 pages should also be removed.

d. Rule 22.6 is inconsistent with Sec. 139 of the Code of Civil Procedure, 1908 (hereinafter CPC for short). If litigants "elsewhere in India" can have convenience to verify before Officer indicated in Sec. 139 of CPC (e.g. Magistrate or Notary), why busy litigants juggling with fast life of Mumbai i.e. "within local jurisdiction", should be excluded from such convenience ? This restriction is unreasonable and also against the broad guiding principles stated in the Introduction to Rules. This Rule

12
MILIND M. SATHAYE,

Advocate, High Court, Mumbai
Office No. 14, 1st Floor - Mezzanine,
32, Raja-bahadur Mansion,
Ambalal Doshi Marg (Hamam Street), Fort, Mumbai.
Phone : (022) 22633179

SB

22.6 and restriction there-under is undermining the primacy, stated to have been given to CPC and CrPC.

e. Procedure provided in Rule 22.9 for special deputation of Officer of the High Court for verification "outside the offices of High Court" is not only putting additional burden of procedure on the Hon'ble Registrar and the Officers of this Court, but also unnecessarily taxing for litigants who are required to pay for additional cash fee & conveyance charges (see Rule 22.9 (b) & (c)). This is not necessary, especially when verification as per sec. 139 of the CPC can be conveniently done. If verification "within local jurisdiction" is also permitted as per sec. 139 of the CPC, it will not only ensure equality in procedure but also reduce burden on the High Court procedure and its Officers, who are already over-burdened.

4) About Part III - Chapter 22 & 23

- a. Rule 23.3(c) should include "Registered Clerk" of advocate also. Every time it may not be possible for Advocate to receive copy of memo of objections.
- b. Stage contemplated in Rule 23.5 (a) about compulsory refusal of registration by Registrar and then giving power to Registrar under Rule 23.5(b) & (c) to excuse delay and order registration will only increase paperwork either in the form of "regular

application with necessary court fees" as per Rule 23.5(b) or "ordinary note" as per Rule 23.5(c). Instead, present system of Registrar granting reasonable time and then passing conditional order should be continued.

5) About Application of Rules 2.16 to 2.21 to Appellate Side Advocates :
Since majority of the clients approaching the Appellate Side Lawyers come from mofusil/Taluka places and since the Rules contemplate coordination between the Client and Advocate in regard to the operation of the Clients' Account, the ignorance of the Appellate Side Clients in this regard make the system totally unworkable and therefore the payments made by them can not be put in the clients account, in strict compliance with the said Rules. Moreover, the rules of the Court are meant to provide the procedure to be followed by the Courts and the Law Officers. These Rules are not germane to procedure of Courts but relate to the client-lawyer relationship, which, it is submitted is outside the purview of procedural rules dealing with the Courts. The issue of privileged contractual relation between the Advocate and Client, including fees and deposits may also become a problem. Application of these Rules to Appellate Side Lawyers, must be reconsidered. On the Original Side, such Rules are applicable, but they were made applicable since the time when solicitors used to be on record and Counsels used to argue. On the Appellate Side, ordinarily

(Ly)
MILIND M. SATHAYE,
Advocate, High Court, Mumbai
Office No. 14, 1st Floor - Mezzanine,
32, Raja-bahadur Mansion,
Ambalal Doshi Marg (Hamam Street), Fort, Mumbai.
Phone : (022) 22633179

(10)

the same Advocate does everything. He interacts with the client, drafts the matter, at times even files it. Same advocate takes circulation, argues the case and so on; in such system, expecting him to keep accounts as per Rule 2.16 to 2.20 is not workable practically and expecting him to face consequences under Rule 2.21 is harsh, to say the least.

6) These suggestions are made based on 261 pages of proposed Rules made available to me (without Formats / Annexures referred in the Rules, which I, despite due diligence could not find on High Court Website also). There are many other issues, which can be discussed in person with the Committee.

Regards.

Yours faithfully,



(MILIND M. SATHAYE)

Advocate - Member of AAWI

THE BOMBAY HIGH COURT, UNIFIED AND REVISED RULES
(ORIGINAL SIDE AND APPELLATE SIDE)

17

Suggestions and Reasons for the same by Adv. Mrs. Geeta P Mulekar

CHAPTER: 23 PROCEDURE AFTER PRESENTATION, REMOVAL
OFF OFFICE OBJECTIONS ETC.

Rule 23.3(b) As soon as the memorandum of objections is ready, the Office shall notify the matter on the Notice Board under the signature of the Office Registrar calling upon the party or the Advocate concerned to remove the said office objections within 14 days from the date of such Notification. The matter shall be notified with reference to the Stamp numbers or the register numbers, as the case may be, the district from which they arise and the names of the Advocates, if any. A copy of the Notice shall be kept filed in the Office, and a copy of the same shall also be supplied to the Advocates Association of Western India and the same shall be displayed on the daily board on the High Court website with the names of concerned Advocates. The Office shall also endorse on the memorandum of objections and its duplicate the date on which the matter was notified as above.

Suggestion:

The matters placed before the Court can be found by a lawyer-wise search for a particular date and in a similar way, provisions should be made for the matters placed before Registrar's board/ Officer's Cause List should be found by a lawyer-wise search for that particular date.

Reason: On many occasions the matter listed before the Registrar for removal of Office objections remains unnoticed by the concerned Advocates and the matter stand dismissed for non-removal of Office objections.

The said matters do not appear on the cause list of the Hon'ble High Court and the said matters appear only on the Registrar's board/ Officer's Cause List.

Mrs. G. P. Mulekar

Shriram S. Kulkarni
Advocate

Court :
Room No. 36,
AAWI, 1st Floor,
High Court Mumbai

Email : gsk28@hotmail.com
Mobile : 9820069164
Res. : 25823829

Resi. And Correspondence :
B-201, "Suncrest" Accolade Society,
Opp. Parsik Janata Shakari Bank,
Green Road, Luiswadi,
Thane (w) - 400604.

To,

The President
A.A.W.I. High Court
Fort, Mumbai

Date : 02.08.2012

Ref : Suggestion on draft Unified Rules

Sir,

SUGGESTION ON DRAFT RULES

Rule No. 2.16 to 2.21

- 1) In fact such rule is not necessary and said rules should be deleted.
- 2) Rule No. 2.16 to 2.21 pertaining to books of account & "Client account" is not required to be maintained. The Litigant are directly incurring cost of litigation and paying directly to clerk, stamp office for purchasing stamp, steno etc. in view of mutual understanding between Advocate and litigants. Similarly, whenever court direct party to deposit money in court then under present rules it is required to be deposited by DD or cheque in the name of officer of court. In view of this position there is no necessity for lawyers to maintain such accounts. So for account book for professional receipt is concerned, it is regularly maintained for the purpose of income tax and same can be made readily available as and when called for.
- 3) In case if the rule is still needed then following explanation be added :- "Explanation :- That the rule 2.16 to 2.21 has no

2...

application where litigant are directly incurring cost of litigation as mutually agreed between Advocate and litigant and in such case it is not necessary for Advocate to maintain such account."

Rule 3.17 :- Time limit prescribed in rule 3.17 of "next working day :- next working day needs to be explained. No amount or cheque is accepted by office unless papers are received alongwith order. It taken time. Therefore it needs to be clarified accordingly.

Rule 6.6 :- Signed undertaking required :- It contemplate on the part of applicant to give undertaking to pay such sum by way of damages or costs as court may award as compensation ... etc"

It is respectfully submitted that such a vague undertaking upon future contingency need not be prescribed because direction of such nature is executable in law.

Rule 6.7 - It contemplates notice to opposite party.
On appellate side opponents are mostly residing in remote place of state of Maharashtra and therefore in case of urgency such practice may adversely - affect the Applicant. Therefore said rule needs clarification as to as and when court directs applicant shall give notice.

Rule 6.9 :- In case of original proceedings such as WP under Art 226, Misc. Application u/s 24 of CPC, Quashing

petition u/s 482 of Cr.PC many a time rejoinder is necessary to deal with reply and therefore till rejoinder leave of court need not be made compulsory. However in case of further additional affidavits such leave can be provided for. In fact it is necessary that litigant should be prohibited from pleading any new case by way of rejoinder sur-rejoinder and additional affidavit and should be asked to file Application for amendment or can be permitted to file affidavit subsequent event and then leave need to be relaxed.

Service :-

Rule 8, 6 - In case of personal notice the party can file affidavit of steps taken for service of notice but he do not have control for acknowledgement receipt. Then rule should provide affidavit mentioning 1) Steps taken for service 2) Service status before due date.

Rule 10.1 ca) :- The word "initiated" is mentioned. Need to be corrected,

Chapter 11 Search and Copies

Rule 11.5 - It is necessary to direct registry to supply authenticated copy of documents which are sought by party provided party pays cost incurred for the same. It may not be necessary to direct office to supply certified copy. Secondly production of authenticated

copy before government, public section undertaking company etc. lower court should be accepted without insisting for certified copy.

Chapter 23 :-

- 1) In case of displaying office objection it is better if name of parties is also displaced on internet.
- 2) Status of office objection and whether office objection are removed and what is status of same etc. needs to be update upon website from time to time. Similarly, whatever orders passed by registry in respect of said case etc. information should be displayed on internet including removal of office objection and rejection for non removal. It is necessary because the Advocate relies on clerk and client relies on Advocate. Therefore if said information is provided on internet stage wise, then client Advocate, clerk can keep follow up. It is not possible for advocate or client to verify personally as to whether objections are removed or not. At present a window is provided on internet of "office objection" but it is not maintained. Therefore rule 23.3 (b) may provide "All office objections shall be displayed and updated on website of High Court from time to time". The office will also update status of removal of same and consequences of non - removal and all orders of registrar in that behalf.

Yours sincerely,



(Shriram S. Kulkarni)
Advocate

Sadashiv G. Deshmukh

A D V O C A T E

~~402, Pushkaraj Prasad, Veer Baji Prabhur Deshpande Marg, Vishnuneswar, Naupada, Thane (W) - 400 602. ☎ : 2542 1557~~
41, Ghantoli Prasad, 4th Floor,
Ghantoli Road, Naupada, Thane - 400 602.

Aug - 2, 2012

To
The Secretary,
AAWT
High Court,
Mumbai

Re : Suggestion for
amendment / adding
to High Court
(Appellate side) Rules / CPC

Sir,

My client - Shri Sharan Phadke of Sangli
has been making efforts for amendments
to the CPC regarding requiring the
parties to give information about
their legal representatives for that
purpose Shri Phadke has moved the
Ministry of Law and Justice.

In response to the Dy. Registrar
Council suggested that the High Court
have power to amend First schedule
to CPC.

Subsequently the Sangli Bar

(20) 16

(1)
(19)
(2)

Association has passed a Resolution suggesting amendment to CPC. The said Resolution recommending amendment is already sent to the Hon'ble Chief Justice, High Court, Mumbai.

I am keeping copies of all the above communication with this letter.

Please do the needful and convey it to the Hon'ble High Court for effecting necessary amendments to ~~the~~ High Court Rules or C.P.C.

Thanking,

Yours faithfully
R. M.
Adv.

22

18
Ketan V. Goshi

B. Com, LL.B

Advocate High Court

Court : 36, A.A.W.I. Kirtikar Library, 1st Floor, High Court, Mumbai - 400 023. Tel.: 2267 3617, 2267 3072

OFFICE : 16 A/ 30, 2nd Floor, Old Orientel Bldg., Nagindas Master Road, Opp. Welcome Hotel, Fort , Mumbai - 400 023.
Phone : 2270 1785 Fax : 2270 2503

**SUGGESTION FOR UNIFIED AND REVISED RULES
(ORIGINAL SIDE AND APPELLATE SIDE)**

High Court Rules Review Committee

CHAPTER 8

SERVICERULE REGARDING AFFIDAVIT OF SERVICE

8.6 Affidavit of Service.—Every Affidavit of Service, where required to be made either by these Rules or by an order of a Court, shall 36 be in {Form No.VV} to these Rules and shall be filed in the Registry at least three days before the returnable date of the matter and the Registrar-General will verify the contents of such Affidavit of Service for accuracy and completeness regarding the factum of service.

PROVIDED THAT where such an Affidavit of Service is required to be made by an order of the Court or by these Rules, and such Affidavit of Service is not made and filed with the Registry within the specified time or, in leave for late filing has been taken, at least 24 hours before the date fixed for hearing, the party required to make such Affidavit of Service shall not be entitled to be heard.

SUGGESTION:

In the rule 8.6 makes it expressly clear that, if the Hon'ble Court after hearing to the Advocate for the party issue notices to the concerned Respondents and also directs the Petitioner to serve them by way of private notice and to file affidavit of service then even if the Hon'ble Court has not made any conditional order of service and despite this, by way of the operation of this proviso the matter shall stands automatically dismissed for want of prosecution. I am inclined to suggest that, this self operational proviso may cause the Advocate and eventually litigants the problem that, unnecessarily matters will be dismissed for default.

Instead of this, the it may be left to the discretion of the Hon'ble Court whether to make any conditional order or not.

CHAPTER 23

PROCEDURE AFTER PRESENTATION, REMOVAL OF OFFICE
OBJECTIONS, ETC

23.5 Registrar to refuse registration where objections are not removed within prescribed time.—


(a) Except as provided in Rule 4, immediately after the expiry of the period prescribed under Rule 3 for the removal of office objections, the office shall place before the Registrar all such matters in which all or any of the objections have not been removed within the prescribed time and the Registrar shall refuse registration of all such matters:

(b) Registrar's Powers to condone delay and order registration.—Provided, however, that, if the party or the Advocate removes all objections within a period of 14 days next after the expiry of the period prescribed under Rule 3 and also makes a regular application with the necessary court-fee stamp for excuse of delay in removing the objections, the Registrar may excuse the delay and order that the matter be registered:

Suggestion: this rule makes it clear that, if the Advocate is intended to file the matter before the Hon'ble Court and in case there are certain objections then the Rule mandates the Ld. Registrar to refuse the registration of the matter itself if the office objection/s are not removed within 14 days. Now a difficulty may arise particularly on the Civil Appellate and/Criminal Side as the territorial jurisdiction of the Appellate side covers large area from various districts. Hence, given a case if the clients from remote places may not be in the position to give all the documents required such as certified copies and decree forms within the period of 14 days only. Hence a suggestion is this the time period of 14 days may be extended to time period of 30 days and instead of keeping a mandate of Refusal of the Registration on the Registrar, it may be left to the discretion of the Ld. Registrar, because even if by virtue of sub-clause (c) though the Registrar do have power to condone the delay this rule may ultimately increase the burden on the office and Registrar who are already overburdened.

Dated 2nd August, 2012.

Yours truly


(Ketan V. Joshi)
Advocate.

THE SANGLI BAR ASSOCIATION, SANGLI.

RAJWADA CHOWK, SANGLI - 416 416.
Welfare Fund Regi. No.33/1984 [Maharashtra]

Adv. Gajendra S. Kabadge

Secretary

Mob- 9271831300

Adv. Pramod A. Bhokre

Vice President

Mobi- 9823611611

Adv. Manik D. Pawar

President

Mob. 9422040660

Ref. No. 235

Date-26/03/2012

To,

**The Hon'le Chief Justice,
High Court, Mumbai.**

Subject : The necessity of amendment in the Code of Civil Procedure 1908 in respect of bringing the Legal Representative in Civil suit or any proceedings of civil nature.

Respected sir,

1. The litigants, the Advocates and the courts are compelled to spend much time for searching and bringing on record the legal representatives/heirs of any party to the proceedings, in case of death of any party. We are facing the same problem for years together. Your Lordship is also aware of the situation.
2. This problem can be solved with the help of an amendment in the Code of Civil Procedure 1908.
3. One Mr. Sharad Ramchandra Phadke R/o. Sangli had moved applications to the RAJYA SABHA SECRETARY, Your Lordship and The Sangli Bar Association, Sangli. The Law Department, Delhi has taken the note of this letter and it has forwarded the representation and petition to High Court, Mumbai seeking their views.
4. This subject was taken for discussion in the Special General Meeting dt.3/12/2011 of this Bar Association, Sangli. I am glad to inform Your Lordship that, this issue was discussed at length and from all angles. The meeting came to the conclusion that the proposed amendment is necessary and accordingly a resolution has been passed to that effect.

Fax No. [0233] 2924908
THE SANGLI BAR ASSOCIATION, SANGLI (2)
RAJWADA CHOWK, SANGLI - 416 416.
Welfare Fund Regi. No.33/1984 [Maharashtra]

Adv. Gajendra S. Kabadge
Secretary

Mob- 9271831300

Adv. Pramod A.Bhokre
Vice President

Mobi- 9823611611

Adv. Manik D.Pawar
President

Mob. 9422040660

Ref. No.

Date-26/03/2012

The proposed amendment, in the opinion of the Sangli Bar Association is as follows :-

After sub rule 2 -
Proposed amendment in Order 6 Rule 14 (A)

" 2 (a) At the time of filing appearance in any suit, or any proceeding by either of the parties to the suit or proceedings, to furnish statement about his/ her proposed Legal Representatives, containing full name, age, addresses. Moreover, he/she shall furnish any change in address from time to time."


After Sub rule 5 -

" (5)(c) In case where statement about the proposed Legal Representative is not furnished by either parties, his/her defense should be struck out and he/she be placed in the same position as if he/she had not put up any defense."

5. It is humbly submitted that, if the proposed amendment is made in the Code of Civil Procedure 1908, it will save the time, money and energy of all the litigants. It will be a step ahead on the way of Justice to all.

6. Hence, it is submitted that, Your Lordship may kindly consider the necessity of amendment as proposed and Your Lordship may take the decision it thinks fit.

Thanking Your,


President

(Sangli Bar Association, Sangli)

Copies annexed :-

- a) Application of S.R.Phadke Dt. 15/4/2011 to Your Lordship and copies forwarded to Rajya Sabha.
- b) Reply of Rajya Sabha Secretary.
- c) Office memorandum of Ministry of Law and justice Dt. 11/3/2011.

भारतीय संसद
PARLIAMENT OF INDIA
राज्य सभा सचिवालय
RAJYA SABHA SECRETARIAT

टेलीग्राम "परिशद"

फैक्स

टेलीफैक्स

वेबसाईट : <http://parliamentofindia.nic.in>

ई-मेल

संसद भवन/संसदीय सौध,

नई दिल्ली-110001

Telegram : "PARISHAD"

Fax :

Telephone :

Website : <http://parliamentofindia.nic.in>

E-mail :

Parliament House/Annexe,

New Delhi-110001.

No.RS. 6(138)/2009 -Com.II

Dated 5th April, 2011

To

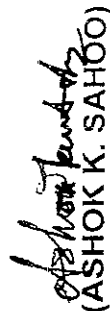
Shri Sharad Ramchandra Phadke,
1095, Peth Bhag,
Opp. Municipal Corporation,
Sangli-416416
Maharashtra.

Sub: Petition praying for necessary modification/amendments in the Code of Civil Procedure, 1908.

Sir,

I am directed to refer to your petition dated the 15th May, 2009 on the captioned subject and to state that the same was taken up with the Ministry of Law and Justice (Legislative Department). A copy of interim communication received from that Ministry vide their communication No. 27(14)/2010-Leg-II dated 11th March, 2011 is enclosed for your information.

Yours faithfully,


(ASHOK K. SAHOO)
DEPUTY DIRECTOR
Phone: 23035365(O)

27
23

F.No.27 (14)/2010-Leg.III
Government of India
Ministry of Law and Justice
Legislative Department

Shastri Bhawan, New Delhi
Dated the 11th March 2011


OFFICE MEMORANDUM

**Subject: Petition of Shri Sharad Ramchandra Phadke, Maharashtra
praying for necessary modifications/amendments in the Code
of Civil Procedure, 1908.**

The undersigned is directed to refer to the Rajya Sabha Secretariat letter No. 6(138)/2009-Com.II dated 10th February 2011 on the above mentioned subject and to state that *vide* Legislative Department's OM of even number dated the 20th January 2011, it has already been conveyed that Law Ministry has also received a representation from Shri Phadke suggesting amendments to the Code of Civil Procedure 1908, as mentioned in the said petition. Under the provisions of the Code of Civil Procedure, 1908, the High Courts also have power to amend the First Schedule to the said Code. Therefore copies of the above referred representation and petition have been forwarded to the High Courts seeking their comments/views on the amendments suggested therein and their comments are awaited.

Final comments can be given only after obtaining the opinion/views of various High Courts in this regard. The proposal will be examined in the Department of Legal Affairs after final proposal for amendments is given shape.

This has the approval of the Secretary, Legislative Department and the Secretary, Deptt. of Legal Affairs.


(Veena Kothavale)
Deputy Legislative Counsel,
Tel. 23384834
FAX No.23382733

The Rajya Sabha Secretariat,
(Kind attn: Sh. Deepak Goyal, Joint Secretary)
Parliament House/Annexe
New Delhi.110001

728 24
THE BOMBAY HIGH COURT, UNIFIED AND REVISED RULES
(ORIGINAL SIDE AND APPELLATE SIDE)

Suggestions and Reasons for the same by Senior Advocate S.R. Chitnis

CHAPTER 2: ADVOCATES AND REGISTERED CLERKS

Rule 2.8 – Consent of Advocate on record necessary before another Advocate files appearance

Suggestion: The Advocate filing his appearance subsequently should obtain the consent of the previous Advocate in the main matter itself.

Reasons: Many times Clients take away the entire brief to engage another Advocate and the subsequent Advocate only files some interim Application and the main matter reflects or remains in the name of the earlier Advocate.

Rule 2.16 – Advocates to keep accounts.

Suggestion: Rules 2.16, 2.17, 2.18, 2.19, 2.20 and 2.21; clearly the said Rules should not be enforced on the Advocates.

Rule 2.21 – Production of Accounts for Inspection

Suggestion: The said rule should be scrapped as serious punishment has been provided for, in the said rule.

583
CHAPTER 8: SERVICE

Rule 8.3(b) – Modes of Service

Suggestion 1: Once the Advocate hands over the Notice to the approved Courier, his responsibility should come to an end. If the Courier

29 25
Company does not serve the same diligently that should not affect the Advocate, his Client or the matter.

Reasons: It is impossible to monitor the functioning of the Courier Company. Many times the persons to whom the said Courier has been addressed to, deliberately avoid the acceptance of the same. In such cases, the report from the Courier Company may be called upon.

Suggestion 2: It is also desirable that the High Court approves the Courier Companies which have access to remote places.

CHAPTER 18: JURISDICTION (CIVIL AND CRIMINAL) OTHER THAN ORIGINAL

Rule 18.2(b)(i)(A)(IV)

Suggestion: There appears to be some mistake in this rule as the said rule suggests that the single Judge cannot take up revision Applications concerning sentences of imprisonment for less than 10 years.

CHAPTER 19: CRIMINAL JURISDICTION

Suggestion: Criminal Jurisdiction is not necessary in the light of the fact that, there is no original Criminal Jurisdiction conferred on the High Court. In rule 19.6, the mentioning of "**Clerk of the State**" is without any value in absence of definition of the same.

25
CHAPTER 22: FILINGS, GENERALLY

Suggestion: At present the Office/ Registry requires the Advocate to certify all the annexures separately as true copies. The said Chapter is silent about this rule. This present requirement should be done away with.

Reasons: It is impossible for any Advocate to personally verify whether all the annexures handed over by the Clients are genuine documents or

80
26
A

false or forged documents or that if any important pages are missing. Particularly in Criminal matters, the Charge sheet often runs into several hundred matters; some of the cases may involve allegations of forgery. For example: Under Section 465 of IPC. In such cases, it will not be proper for an Advocate to certify any copy as a true copy of any disputed or forged document. Many times, the accused are in jail and its not possible to take instructions directly from him.

CHAPTER 40: PRESENTATION OF APPEALS AND APPLICATIONS

Rule 40.13 – Office not to accept any matters not in conformity with the Rules.

Suggestion: The acceptance of any matter should not be left at the complete discretion of the office. At the most, office can take out objections in those matters which the Advocate can comply with or satisfy the court that the objections are not found.

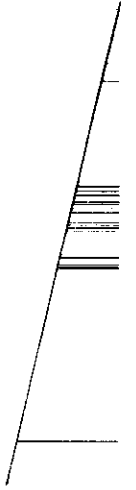
CHAPTER 42: CRIMINAL BUSINESS APPEALS AND APPLICATIONS

Rule 42.17(b) – Supply of copy of record to Government Pleader and Advocate for Accused in certain proceedings

Suggestion: The said rule requires obtaining record and proceedings for the purposes of admission of Appeals arising under Section 302. This should be left to the discretion of the Court as in many cases such exercise for the purposes of admission may not be necessary and it may take many months before the record and proceeding is received and in the meantime even the bail applications could be left pending which should be avoided.

SM

Suggestion: Affidavits of persons in Jail should be dispensed with under the Rules.



23) 24) (b)

CHAPTER 44: BAIL APPLICATIONS

Rule 44.1 – Bail Application to whom to be made

Suggestion: The Chapter 44, regarding the Bail Applications be retained because Original Trials in the High Court being sessions cases are no more taken by the reason of Section 474 of the Code of Criminal Procedure.

Reasons: Lately we have seen that under the special acts in respect of Security Scam of 1992, cases are being tried in the High Court by virtue of the said Act. So provisions need to be made that such Applications may be made if the Judge taking the matters acts as a Single Judge taking Criminal matters.

The other provisions from 44.2 to 44.6 have become redundant and should be deleted because High Court Criminal Manual takes care of all these bail provisions and sureties when such an accused is granted bail.

It may also be noted here that “Clerk of the State” has not been defined under the said Bombay High Court Unified and Revised Rules and therefore all those rules from 44.2 to 44.6 be deleted.

S. H. Chitambar
218/2012

Reg. No. F-949

☎ : 0240-2486048

ADVOCATE'S ASSOCIATION OF BOMBAY HIGH COURT AT AURANGABAD.

High Court Building, Jaina Road, CIDCO, Aurangabad-431 001.

• PRESIDENT •

SHIVAJI T. SHELKE
Mob.: 9422201672

• VICE PRESIDENT •

A. B. KHAROSEKAR
Mob.: 9960512035Mrs. GEETA DESHPANDE
Mob.: 9823113383

• JOINT-SECRETARY •

RAHULA. TAMBE
Mob.: 9850526785Mrs. SABAHAT T. KAZI
Mob.: 9823942970

• TREASURER •

SANJAY A. WAKURE
Mob.: 9423342644

• MEMBERS •

AJIT S. ZAREKAR
Mob.: 9423463311VISHALA. BAGAL PATIL
Mob.: 9403636999SWAPNILA. DESHMUKH
Mob.: 9420406248VINAYAK M. KAGNE
Mob.: 9881074813VISHWAJIT R. JAIN
Mob.: 9423252331SHRIMANT S. MUNDHE
Mob.: 9822489690AVINASH A. KHANDE
Mob.: 9420350420Mrs. POOJA V. LANGHE
Mob.: 9881621282Miss. RASHMI P. GOUR
Mob.: 9823536853

• SECRETARY •

SUJEET G. KARLEKAR
Mob.: 9422775410

Ref. No.: 1932/12

Date: 19/08/2012

To,
D. V. Sawant,
Registrar, O.S./ Prothonotary & Senior Master,
High Court, (Original Side)
Bombay-4000 032.

From,
The President,
Advocates Association of Bombay High Court,
High Court Building,
Jaina Road, CIDCO
Aurangabad-431 001.

Subject:- Comments on Bombay High Court Unified
Revised Rules (Original Side and Appellate Side).

Sir,

With reference to the aforementioned subject I
hereby, request to grant some more time to obtain the
views or comments of Bar members.

I am, herewith, sending, some views on the
abovementioned subject.

Thanking You,

Yours Sincerely,

Shivaji T. Shelke
(Adv. Shivaji T. Shelke)
President

SUGGESTIONS/COMMENTS REGARDING UNIFIED REVISED RULES (ORIGINAL SIDE AND APPELLATE SIDE) ON BEHALF OF HIGH COURT OF BOMBAY BENCH AT AURANGABAD.

- 1) **Rule 2.2 (b) (3) Part-I Advocate to file declaration alongwith the Vakalatnama, that, he/she continues to be on the roll of Bar Council-** The bar feels that, every time it will not be convenient to give such a declaration alongwith the vakalatnama and hence either the format of the vakalatnama may be modified or such a declaration may be obtained after reopening of courts in June.
- 2) **Rule 2.30 (c) Part-I The advocate shall have paid income tax on his professional income and his income should not be less than Rs. 7,50,000/- (Seven lakhs and Fifty Thousand per annum) on the date of application for designation of Senior Advocate.** - The bar feels that, considering the fee structure at Benches and the capacity of the litigants to pay the fees, the above criteria may not be applied because what is important for designating as a senior advocate is his legal knowledge and experience and advocacy skills. Sometimes senior advocates who have crossed the age of retirement may be legally qualified because of their standing and experience but may not be able to fulfill this criteria and hence bar feels that this condition be deleted or suitably modified.
- 3) **Rule 22.16 (d) Part-III The two weeks time for removing the office objection-** The bar feels that the two weeks time for removing office objection is not adequate because mofusil litigants who are not conversant with the technicalities of law and not conversant with fax emails, communications take more time for compliance and hence it should be extended for 6 weeks.
- 4) **Rule 22.23 Part III- Notes to be filed for limited purpose only-** The bar feels that, every time filing Civil Applications for all judicial orders may not be convenient because some motions like, Speaking To Minutes, Extension of Stay, Extension of Payment of Bhatta Charges, Extension for supplying the copies of petition for respondents, Urgent Circulations are formal in nature and if the advocate is directed to file Civil Application, for obtaining the affidavit of the client lot of time and energy will be spent and hence such type of motions can be done by filing a note addressed to the learned Registrar of The High Court. Long standing practice to file notes for abovementioned motions may be continued which will save the time and energy of the litigant and the advocate.
- 5) Many times after the Hon'ble High Court passes an order on matter, time is consumed in other formalities i.e for signature of the Hon'ble Judges, typing, uploading the orders on computer and then moving of matter from one department to another, it takes 8 to 10 days, and hence the papers are not available with the office for payment of bhatta and other formalities which the concerned advocate has to carry out. Many times because of the above reason the matter is again placed before the Hon'ble Court for non-compliance even before the advocate or his clerk has an opportunity to comply with the formalities. As this problem is frequently arising some guidelines may be issued to the office about compliance after the order and the advocates may be given sufficient time thereafter.

7 ad
received
17/8/12



Bul D

The Advocates' Association of Western India

Room No. 36, 1st Floor, High Court, Mumbai - 400 032.

Tel. No. 2267 3617 / 2267 3072 / 2267 5690

Date : 10/08/2012

To,

The Chairman,
Rule Committee,
Registrar General,
High Court, Bombay.

Sub :- Suggestions / Objections to the Unified Rules.

Sir,

I am forwarding herewith the Suggestions / Objections submitted by members of A. A. W. I. for your kind consideration.

May I request you to consider the request.

Thank you.

Yours Sincerely,

(Signature)
Rajiv Patil
President
A. A. W. I.

Reg/LAM
(Signature)
Reg. Gen.
13/8/12

R 6079
14-8-12

Rule
ME
Reg (L & R)
14-8-12

K.S. BAPAT

Advocate

Office: Office No. 4, Varma Chambers, 11-A,
Homji Street, Store Lane, Horniman Circle,
Fort, Mumbai - 400 001,
☎ 66550250, 22634130
E-mail ID:- kiran_bapat@yahoo.co.in

To,
The President,
AAWI, High Court,
Mumbai

Date: 8th August 2012.

Sub: Suggestions for modifications in draft rules circulated by the association.

Dear Sir,

I wish to draw your attention to certain rules contained in unified draft rules circulated which in my view require modification/alteration.

1. **Rule 2.3 of chapter 2** of the draft rules contemplates that every advocate on record should file a memorandum of local address within the limits specified in appendix XX which shall be the address for service. The draft rules circulated do not contain the said appendix XX and therefore there is an ambiguity about the term local address which needs a clarification.
2. **Rule 2.16 of Chapter 2** contemplates books of account to be maintained in respect of the monies received from the client. In my view the fees received by the advocates from their clients' is an internal matter between the advocate and his client and cannot be subjected to the scrutiny under the High Court rules.
3. **Rule 2.21 of Chapter 2** contemplates the accounts to be produced for inspection before the registrar general. In my view the registrar general is not an authority to know the fees received by the advocates and therefore the rule needs to be deleted.
4. **Rule 2.26 of Chapter 2** in my view is in conflict with the freedom of speech and expression guaranteed under the constitution of India. In my view strike resorted to by the lawyers for any reason of whatsoever nature cannot be treated like

interfering into the administration of justice. In my view the conduct of the advocates is subject matter of disciplinary proceedings by the bar council and absence from work need not be equated with concept.

5. Rule 2.30 (C) of Section B relating to designating the senior advocates needs a relook. In my view the senior advocate is bestowed with designation looking into his ability, integrity, standing at the bar or special knowledge and experience in law. The said qualities in my view cannot be subjected to the criteria of income as irrespective of the income if an advocate has the above said qualities he has right to apply for being designated. I further feel that the system of making an advocate to apply for being designated also needs to be relooked. In my respectful suggestion the Hon'ble The Chief Justice can form a committee of at least 3 senior Judges of this Hon'ble Court, preferably elevated from the bar, who may consider conferring the designation on a particular lawyer if he possesses the qualities as aforesaid. I feel that since designation is an honour given to a lawyer for his meritorious work he need not be subjected to make an application for the same. The committee if so formed may therefore eliminate the possibility contemplated in rule 2.30 (f). In my view in rule 2.29 (d) there is a provision for voting by the judges which itself may invite the possibility contemplated in rule 2.30 (f).

6. Rule 6.6 of Chapter 6 contemplates a signed undertaking to be given at the time of filing an application for interim relief; thereby the party has to undertake to pay damages to the other side. In my view such an undertaking should be restricted only while seeking ex-parte ad- interim relief. In case both the parties are heard while granting interim relief then there is always a presumption that the Judge granting the interim relief must have considered the balance of convenience and

irreparable harm and injury while passing such order. In my view therefore the said order need not be kept open for scrutiny to decide the prejudice caused to any of the parties by such interim order.

7. Rule 22.6 of Chapter 22 part III indicates as regard to verification of documents and before whom it is to be done. In my view the documents verified within Mumbai needs to be permitted to be verified in accordance the provisions of Section 139 of Code of Civil Procedure. Sometimes the client do come after court working hours and come during the lunch break. This modification will help the litigants and lawyer both.

Regards,


KIRAN.S. BAPAT
ADVOCATE

From:

1) Rajesh Datar,

Advocate

2) Gauri Godse

Advocate

Room No. 18,

AAWI, High Court,

Mumbai

9th August 2012

To,

The President,

AAWI,

High Court,

Mumbai

Ref: Objections and suggestions to the Draft of Bombay
High Court Unified and Revised Rules (Original Side and
Appellate Side)

Sir,

We are hereby submitting our objections and suggestions
to the Draft of Bombay High Court Unified and Revised
Rules (Original Side and Appellate Side). Kindly take note
of the following objections and suggestions:

Part - I

38
39
6

1) Rule 2.2.(b)(i) of Chapter 2: Local Address is neither defined nor interpreted. Most of the Advocates practicing on the Appellate Side belong to District places and Mofussil areas who are residing and/or having their offices outside Mumbai Jurisdiction. Hence it is necessary to modify the rule to mean that correct, complete and proper address has to be supplied by the Advocate where the notice can be served.

2) Rule 2.3.(a) of Chapter 2: Appendix XX as referred to in the Rule is not attached to the Rule published on the Official Website of the High Court. Hence the rule is incapable of proper interpretation and thus requires to be redrafted.

3) Rule 2.8 of Chapter 2: This requires to be redrafted with reference to providing local address as referred to in Rule 2.2(b)(i) and 2.3(a) in the event of change of Advocate. This Rule also requires addition with reference to responsibility of the party to provide address in case of death of Advocate. Hence it is also necessary to provide that along with address of Advocate, address of the party/parties for whom the Advocate is filing appearance is also to be submitted.

3A
40
17

It is experienced that once a party is served and files appearance through Advocate and for any reason the Advocate ceases to be an Advocate on record, the entire obligation is cast upon the Appellant/Petitioner to again serve the party i.e. the Respondent/s, which is very unjust. Hence a provision is necessary casting obligation on the party to provide registered address as required under Order 6 Rule 14-A of CPC.

4) Rule 2.16 and 2.21 of Chapter 2: This Rule is ambiguous and does not spell out the intention behind it as it contemplates books of accounts to be maintained in respect of the monies received from the client. This Rule amounts to interference in an internal matter between an Advocate and client and thus cannot be subject to scrutiny under High Court Rules. This Rule attempts to violate the basic principles of Trust and Privacy between an Advocate and Client.

5) Rule 6.6 of Chapter 6: Signed undertaking as per this Rule is uncalled for in as much as interim relief is confirmed only after hearing the other side and in case of ex-parte ad-interim Order the same is always confirmed after hearing other side or giving an opportunity of being heard. This Rule suffers from ambiguity in as much as there is no mechanism

41
8

provided for arriving at a conclusion regarding any loss and/or quantum of loss. If signed undertaking is to be submitted as per rule the same will be filed along with the Interim Application, hence the provision for dispensing with the undertaking is redundant. Hence this Rule requires to be omitted.

6) Rule 6.8 of Chapter 6 and 8.6 of Chapter 8: In view of CMIS, daily board is notified mostly one week in advance. Once the matter is notified and the matter is listed on board, office refuses to accept filing of Reply or Service Affidavit on the ground that it is listed on board. Hence a provision should be added for acceptance of filing even if matter is listed on board.

Following Proviso

“PROVIDED THAT where such an Affidavit of Service is required to be made by an order of the Court or by these Rules, and such Affidavit of Service is not made and filed with the Registry within the specified time or, in leave for late filing has been taken, at least 24 hours before the date fixed for hearing, the party required to make such Affidavit of Service shall not be entitled to be heard.”

is unjust, violates fundamental principles of natural justice and is unconstitutional in as much as for various unavoidable circumstances an Order directing filing of Affidavit of Service and/or seeking leave for late filing may not be possible. Thus

9 (12)

provision of extension of time is required and the right of being heard cannot be denied on such ground alone.

Form No. VV as referred to in Rule 8.6 is not attached to the Rules published on the Official Website of the High Court, hence the rule is incapable of proper interpretation and thus for all the aforesaid reasons Rules 6.8 and 8.6 requires to be redrafted.

7) Rule 8.9(b) of Chapter 8: This Rule is inconsistent with Rule 8.9(a) in so far as it casts obligation on the party or Advocate to supply signed hard copy and soft copy of notice in as much as notice is not prepared by Advocate or party, hence it is not possible to supply signed hard copy and soft copy by an Advocate or party.

8) Rule 8.13 of Chapter 8: This Rule is unjust and casts impossible obligation on an Advocate in so far as it requires an Advocate to certify that whether the person to be served is conversant with English language. This Rule also ignores that a person to be served can also be a Company or a Firm where it is not possible to give any such certificate and more so an Advocate cannot be expected to have any personal knowledge of the person to be served.

9) Rule 9.5 of Chapter 9: This Rule is unconstitutional in as much as the Rules are procedural and thus not to be a tyrant

~~111~~
~~10~~
43

but a servant and not an obstruction but an aid to justice, as held in the case of Sambhaji V/s Gangabai reported in (2008) 17 SCC 117. In any event this rule seeks to restrict the discretionary powers of the Court.

112

1144

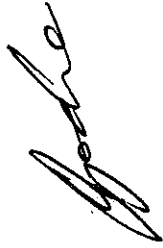
Part III

1) Rule 22.16 of Chapter 22: A supporting Rule is necessary for immediate registration of a matter in case there is no objection raised.

2) Rule 22.26 of Chapter 22: This Rule is unjust as the compulsory e-filing shall not be possible for litigants belonging to lower income group and/or Advocates not conversant with advanced technology of e-filing. Not every litigant and every Advocate can be compelled for e-filing when approaching a court of Law is a fundamental and constitutional right of a citizen of India which cannot be barred or restricted by compulsory e-filing.

It is humbly submitted that aforementioned objections and suggestions be considered.

Regards



(Gauri Godse)

Advocate



(Rajesh Datar)

Advocate

Ulhas T. Naik

ADVOCATE HIGH COURT

Chamber :- Room No. 18, Ground Floor .

A.A.W.I. Bar Room, High Court, Mumbai - 23.

Tel. : 2267 3153 / 2267 2880 Fax : 22632498

Email : advulhasnaik@gmail.com

Off. . 102, 1st Floor, Ruby vihal, 30-D Cawasji Patel Street,

Opp. Yazdani Bakery, Near Hutatma Chowk,

Fort, Mumbai - 400 001. Tel/Fax : 022 - 2202 1020

Mob. : 97027 82521 / 99695 00991

E-mail : naikulhas@gmail.com

To,

Date :

08.08.2012

The President/Secretary,
Advocates Association of
Western India, High Court,
Mumbai.

Sirs,

I am a practicing Lawyer in Bombay High Court and member of Advocates Association of Western India and Bombay Bar Association. I have perused the draft rules and I hereby submit my suggestion/amendment by registering my objection with regard to Rule 2.26 which reads as under;

"2.26 Interference With The Administration Of Justice.—

- (a)** A strike resorted to in Court or abstention of work from Court by way of protest by an Advocate or group of Advocates or any Bar Association shall be deemed as an act which tends to interfere with the administration of justice.
- (b)** Any advocate resorting to strike will be dealt with in accordance with law.
- (c)** In exceptional cases where dignity, integrity and independence of the bar and/or the judiciary are at stake, the President of the Bar Association of the High Court in consultation with the Chief Justice may express protest by abstention from work which shall not be for more than one day.

13 44 46
: 2 :

Provided that the Chief Justice will determine the issues after obtaining the view of the Chairman, Bar Council of Maharashtra and Goa, if necessary, as regards involvement of dignity, integrity or independence of the Bar and/or the Judiciary and the degree and adequacy of degree thereof to call for abstention from work, and the decision of the Chief Justice shall be final."

Apparently this rule seems to have been prepared by exercising powers U/s.34 of the Advocates Act, 1960. Section 34 of the Advocates Act empowers the High Court to frame rules with regard to conditions subject to which an Advocate shall be permitted to practice in the High Court and Courts subordinate there too.

It is my humble contention that Rule 2.26 is ultra virus of Section 34 of the Advocates Act as I feel that Rule 2.26 is not the condition laid down by the Hon'ble High Court but it is in the form of prohibition prescribed by the Hon'ble High Court prohibiting Advocates of the High Court from committing breach of Rule 2.26.

It is further humbly suggested that the Rule is unreasonable restriction on the Advocates as an individual

and Association since it violates the Fundamental Rights guaranteed under Article 19 (1) (a). This also encroaches upon the Advocate's Right to collectively agitate on the issue which are unjust and illegal.

It is also humbly suggested that the Rule also violates Article 14 in as much as the Classification made between Advocates practicing in Hon'ble High Court & in other subordinate Courts is based on no intelligible differentia & therefore discriminatory. The powers conferred on the Hon'ble Chief Justice who has been made Persona designate to decide with regard to the breach of Rule 2.26 [c] is vague in its definition of dignity, integrity and independence of the bar and/or the judiciary. The words are undefined under the Rules and are vague in nature. The Period of one day prescribed under Rule 2.26 [c] is arbitrary, unjust and with no nexus with the object enough to be achieved.

I trust and hope my humble suggestions will be considered while carrying out amendments, if any, in the said Rules in the interest of justice.

Yours faithfully,



(Ulhas T. Naik)
Advocate High Court



D. J. KHAMBATA

ADVOCATE GENERAL OF MAHARASHTRA
SENIOR ADVOCATE, LL.M. (HARVARD)

AG/397/2012
Dated the 10th August, 2012

To

1) The High Court Rules Review Committee, Mumbai
C/o Shri D.V.Sawant,
Registrar O.S. / Prothonotary & Senior Master,
High Court (Original Side),
Mumbai-400 032.

2) The High Court Rules Review Committee, Mumbai
C/o Shri M.S.Patil,
Registrar (Judicial), Appellate Side,
High Court, Mumbai-400 032.

Dear Sir,

Re : Unified and Revised Rules (Original Side and Appellate Side) prepared by the High Court Rules Review Committee ("the draft Rules") [Part V].

I request you to place this letter and the Annexure thereto before their Lordships the Hon'ble Shri Justice A.M.Khanwilkar, the Hon'ble Dr. Justice D.Y.Chandrachud, the Hon'ble Shri Justice S.J.Vazifdar, the Hon'ble Shri Justice V.M.Kanade, the Hon'ble Shri Justice R.C.Chavan, the Hon'ble Principal Judge, City Civil Court Smt. Swapna Joshi and other members of the High Court Rules Review Committee.

I apologize for not having responded earlier than now to the notice first given in April 2012 inviting objections and suggestions. Since the matter is of seminal importance I welcome the opportunity given by the Rules Review Committee, even at this stage, to make suggestions.

I believe that the framing of such rules represents an opportunity to streamline and expedite the process of disposal of suits – the raison de'tre for survival of Original Jurisdiction of

RS-1/2149
13/8/12

S.O. Rule sec.

10/8/12
10
Regr(JT)

the High Court. If we pay greater attention to early disposal of the Suit itself, the problem of runaway and sometimes tortuous interlocutory proceedings will be addressed. I have in the time available applied my mind only to Part V of the draft Rules.

Whilst I am aware that some may believe the suggested procedure to be too ambitious, I for one am of the view that a tighter procedure, enforced with sufficient discretion left to the individual Judge, will facilitate quicker disposal of suits without sacrificing fairness. I also believe that judicious use of orders for costs from time to time can help nudge along the progress of the trial.

It is not out of context to mention that there is pending before the Rajya Sabha a Commercial Division of High Courts Bill 2009 which will require all commercial matters to be transferred to and/or filed only before the Commercial Division of each High Court. The procedure prescribed in Section 9 of that Bill, for disposal of suits, is radical. Moreover as held by the Supreme Court in its decision in Iridium India Telecom Ltd. v. Motorola Inc. AIR 2005 SC 514 the power of High Courts to frame their own rules of procedure that will prevail over the position of Code of Civil Procedure 1908 ("the CPC") was also reaffirmed.

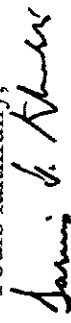
If we believe that we are the premier High Court in the country, we must be a trendsetter for framing simple but firm rules that facilitate expeditious disposal of suits and provide means for countering delaying tactics on the part of recalcitrant defendants. I do not for a moment suggest my proposed amendments are the only way to achieve this and welcome any other means of achieving this objective or any modification of what I have suggested.

In the interests of clarity I also suggest that Part V should set out in extenso all the provisions seriatim, including those to be found in the CPC. This is necessary particularly in view of certain important changes effected by way of State amendments to the CPC and by these Rules.

It is in that spirit that I suggest the amendments enclosed in the Annexure to this letter.

Encl : Set of amendments to the draft Rules.

Yours faithfully,



(D.J.Kharabata)

Advocate General of Maharashtra

SUGGESTED AMENDMENTS TO PART V OF THE DRAFT RULES

CHAPTER 25

- 1. Add the following as Rule 25.5 :-

“25.5 The Plaintiff shall be in the form prescribed.”

[NOTE : A form should be annexed to the Rules which can, amongst other things, mandate that the statement of facts in a Plaintiff shall as far as possible be in the form of a List of Dates in the body of the Plaintiff. The Plaintiff should separately contain details of the parties, submissions (without citing judgments) for final and interim reliefs, paragraphs for valuation and Court fees, limitation and jurisdiction and prayers.]

CHAPTER 27

- 2. Add the following as Rules 27.4 - 27.6 :-

“27.4 The Defendant shall within ninety days from the date of service of the Writ of Summons on him present a Written Statement.

27.5 Where the Defendant(s) fails to file a Written Statement within the period provided above, he may be allowed to file the same on such other date as may be specified by the Court upon sufficient cause being shown and for reasons to be recorded in writing and upon award of costs to the Plaintiff, but which shall not be

~~(u)~~
later than one hundred and fifty days from the date of service of the writ of (5)
summons.

[NOTE : The periods provided are longer than those in the CPC. Moreover discretion is reserved to the Court, in the rarest case, to extend these periods – See proposed Rule 32.11.]

27.6 *The Defendant(s) shall in addition to the set-off permissible under Order VIII of the Code of Civil Procedure 1908, also be entitled to claim an equitable set-off being a claim for money which the Defendant(s) has against the Plaintiff(s) and which may not arise out of the transactions that are the subject matter of the Plaintiff.*

CHAPTER 29

3. Re-title as “DOCUMENTS, DISCOVERY AND INSPECTION”
4. Add the following as Rules 29.3 – 29.7 :

“29.3 *Upon filing of the original documents with the Plaintiff in accordance with Order VII Rule 14 of the Code of Civil Procedure 1908 the Prothonotary and Senior Master shall accept xerox copies in substitution of the original documents after comparing the original documents with the xerox copies and certifying the xerox copies to be true and accurate copies of the originals. The original documents may then be returned to the Plaintiff(s) upon an undertaking being given by the Plaintiff(s) to produce the originals at all stages of the trial including during recording of evidence and to give inspection of the documents to the other parties on request. In cases of extreme urgency, the Court may dispense with the*

filing of the original documents by the Plaintiff(s). Such dispensation can be given even after the Plaintiff is filed.

29.4 The Defendant(s) shall produce in Court all original documents relied upon in the Written Statement and in the possession of the Defendant(s), together with the Written Statement. Where any such document is not in the possession or power of the Defendant, he shall, where possible, state in whose possession or power it is.

29.5 A document which ought to be produced in Court by the Plaintiff or the Defendant as the case may be when the Plaintiff or the Written Statement is presented or to be entered in the list to be filed with the Plaintiff and which is not produced or entered accordingly, shall not, without the leave of the Court be received in evidence on his behalf at the hearing of the Suit. The leave of the Court shall be given only upon sufficient cause being shown and reasons being recorded by the Court, in respect of each such document separately.

29.6 Nothing in this rule applies to documents produced for cross-examination of witnesses or by the Plaintiff in answer to any case set up by the Defendant or by the Defendant in answer to any case set up by the Plaintiff in reply to a set off or counter claim or handed to a witness merely to refresh his memory.

29.7 The Plaintiff(s)/Defendant(s) shall, along with the filing of the Plaintiff/Written Statement as the case may be, file such applications for interrogatories, discovery and for production and inspection of documents as arise at that stage. Subsequent applications may be allowed by the Court for sufficient cause and for reasons to be recorded in writing. Where any application for interrogatories, discovery or for production and discovery of documents is allowed, the parties shall be permitted to file supplementary pleadings or

applications for amendment to the existing pleadings within such time, not exceeding two months, as the Court shall specify and permit.”

CHAPTER 30

5. Add the following as Rules 30.8 and 30.9 :-

“30.8 The Court may from time to time and shall after the pleadings are complete, hold a case management hearing at which the Court shall after considering the pleadings, frame and settle the issues that arise, mark commonly admitted documents in evidence, issue appropriate directions for discovery and inspection and/or production of documents either suo motu or on the application of parties and set a schedule for the recording of evidence. After recording of the evidence is complete, the Court shall hold another case management hearing as provided in Rule 32.7.

30.9 The Prothonotary and Senior Master shall file reports from time to time as may be required and in any event every six months drawing to the attention of the Court to any default(s) that may have occurred in directions given at such case management hearings and to any reports that may have been filed by the Commissioner.”

CHAPTER 31

6. Substitute Rule 31.2(a) and (b) with the following :-

“(a) The Plaintiff shall simultaneously file affidavits in lieu of Examination-in-chief of each of its witnesses within six weeks from the filing of the Written

~~54~~ 54 6

Statement or from the date by which the Written Statement was required to be filed;

- (b) *In the event that the Plaintiff at any stage prior to the commencement of cross-examination of the concerned witness, wishes to withdraw such affidavit or the evidence in chief it shall be permitted to do so; Provided however that the Defendant(s) shall be entitled to oppose withdrawal of the affidavit or the evidence in chief or of such portion of it as may contain any admission on oath in favour of the Defendant(s). The Court shall decide such application by the Plaintiff and objection by the Defendant at the earliest possible opportunity.*
- (c) *One month after the cross-examination of all the Plaintiffs' witnesses is complete, the Defendant(s) shall simultaneously file affidavits in lieu of Examination-in-chief of each of its witnesses. The provisions of Rule 31.2(b) shall apply mutatis mutandis in respect of the affidavits filed by and evidence in chief of the Defendant(s).*
- (d) *As far as possible, within two months of the filing of affidavits in lieu of Examination-in-chief, the Court shall record the evidence in chief, decide all objections as to admissibility of any portion of the affidavit(s) as also as to the admissibility of all documents sought to be proved by such affidavit(s). After the evidence in chief is recorded and the admissibility and marking of documents concluded, the Court shall refer the matter to the Commissioner under Rule 31.3 for the purpose of recording cross-examination and/or any additional Examination-in-Chief as provided below."*

7. Add the following as Rule 31.3(c) :-

“The Commissioner shall be empowered to record not only cross-examination but also additional Examination-in-chief subject to any objections that may be raised as to any portion of such evidence or as to the admissibility of any documents sought to be proved thereby or marked. If any such objections are raised the Commissioner shall as soon as the recording of evidence of that particular witness has concluded refer all such objections to the Court for its decision. The Court shall dispose of the objections within one month of the receipt of the Report of the Commissioner containing the objections.”

8. Add the following at the end of Rule 31.7 :-

“31.7 As far as possible the Commissioner shall record the evidence from day to day unless, for sufficient cause and for reasons to be recorded in writing in a report to the Court, this is not possible. Such report shall be filed with the Court forthwith.”

CHAPTER 32

9. Add the following as Rules 32.7 – 32.11 :-

“32.7 Not more than one month after completion of recording of the evidence of the parties and the receipt of a report from the Commissioner, the Court shall place the suit on board for directions and case management. At such hearing the Court shall, after receiving estimates from the parties, fix a detailed schedule for the hearing of oral arguments, filing of written submissions, decision on any outstanding objections, and delivery of judgment.

(54) (8)
(56) (8)

32.8 *It shall be open to the Court to direct that prior to the advancement of oral arguments the parties shall file written submissions in the matter (as far as possible on an issue-wise basis) within a specified period of time. No written submissions shall be accepted by the Court after oral arguments are concluded save and except for reasons to be recorded in writing.*

32.9 *The Court shall endeavour to ensure that the directions passed at the case management hearings are adhered to and shall impose costs on such party(s) that is in default of the directions issued.*

32.10 *The Court shall be entitled to impose such costs upon the parties as it thinks fit. The costs shall as far as possible not be reserved to the conclusion of the trial but shall be imposed immediately upon cause arising. In the event of an award of actual costs and expenses for hearing, the Court shall have the discretion to impose a fixed lump sum amount itself which may be subject to exact quantification by the Prothonotary and Taxing Master after hearing the parties.*

[NOTE : Section 35B of the CPC being applicable compliance with orders for costs can be made a condition precedent for permitting to further prosecution by the Plaintiff or the Defendant.]

32.11 *The Judge may, for sufficient cause and by a speaking order after hearing the parties, extend or modify any of the time limits for trial set by these Rules. Provided however that the Judge shall not extend the time limit for filing of a Written Statement beyond the limits prescribed in these Rules, except in the rarest case, after hearing the parties, and for reasons to be recorded in writing. Such application for extension shall be disposed of within one month after it is filed."*

55
5

Draft proposal for amendment of rules

56
58

PROPOSAL FOR AMENDMENT OF RULES RELATING TO HIGH COURT RECEIVER :-

The High Court Rules Review Committee has prepared a draft of unified and revised rules of Original side and Appellate Side of Bombay High Court.

The rules in Chapter 14, Page 73 to 75 deal with the office of the Court Receiver.

All the draft rules are infact copy of the existing rules framed in 1980. At present Rules and Forms of the High Court Of Bombay (O.S.) are applicable to the office of the Court Receiver. Chapter XXX of these rules containing Rules 589 to 599 enumerate rules relating to the office of the Court Receiver.

We may give following suggestions:-

I. In the proposed rules there is a reference to Court Receiver and Receiver. It may be in view of a possibility that in some case/cases there could be an occasion to appoint a Private Receiver. Reading of the proposed rules indicates that different actions are to be taken by High Court Receiver and the Receiver in respect of submission of accounts to the Commissioner for Taking Accounts. To avoid confusion and for convenience the term "**Court Receiver**" will be defined to mean "**Court Receiver of High Court at Bombay**". For this purpose the following definition in Rule 1 may be added.

Rule 1(g): "Court Receiver means The Court Receiver of High Court at Bombay."

If this definition is added in alphabetical manner the proposed rules 1(g) to (q) will have to be suitably changed.

II. Fees of Court Receiver :- In the present rules, Rule 591 deals with the fees of the Court Receiver. However in the revised draft rules the provision as regards the fees of the Court Receiver does not form part of the rules, but in para 14.2 it is mentioned that fees of the Court Receiver shall be according to the scales set out in the table at Appendix XXX to these Rules. It seems that Appendix XXX is not yet drafted or prepared. So far as fees of the Court Receiver as per Rule 591 is concerned it provides for charging of fees on the percentage basis. Existing fees structure is as follows:-

Rule 591. Fees of Receiver :- Unless otherwise ordered by the Judge, the Court Receiver shall charge fees according to the following scale:-

SR. NO	Scale of fees	Per cent
1.	On Rents, Royalties or licence fees recovered..	6
2.	On outstanding recovered except as provided in item 3 below:- On the first Rs.25,000/- or fraction thereof On the next Rs.25,000/- or fraction thereof On the next Rs.50,000/- or fraction thereof On any further sum over Rs.1,00,000/-	5 3 2 1
3.	On outstanding recovered from a Bank or from a public servant without filing a suit...	1
4.	On sale of properties movable or immovable calculated on the total value realised in any one estate:- On the first Rs.25,000/- or fraction thereof On the next Rs.25,000/- or fraction thereof On the next Rs.50,000/- or fraction thereof On any further sum over Rs.1,00,000/-	3 2 1/2 2 1
5.	For taking charge of movable property which is not sold on the estimated value.	1

6.	For taking custody of moneys	1
7.	For taking custody of Government Securities or Stocks, Shares, Debentures, Debenture-Stock or other Securities which are not sold on the estimated value.	1
8.	On the interest earned by investment of funds in the custody of the Court Receiver.	5
9.	For any special work, not provided for above, such remuneration as the court on the application of the Receiver shall think reasonable.	

Suggestion 'A' :- This provision was there in the old rules which were in practice since 1957 and the percentage shown is more or less the same. In the existing rule, item 2 and 4 prescribe fee as regards the outstanding money recovered and provides percentages on first Rs.25,000/-, next Rs. 25,000/- or fraction thereof then on next Rs.50,000/- or fraction thereof and on any other sum over Rs.1,00,000/-. It needs upward raising. Over a period value of money has decreased and the expenditure of the office of the Court Receiver has increased manifold because of increase in the salary of the employees, office expenses, prices of the things or items used by the Court Receiver.

Suggestion 'B' :- The wording of Item No.5 is susceptible to interpretation. Sometimes when Receiver is appointed to preserve/protect the movable property without intending to put it to sale, the parties object to charging of fee saying that such a situation is not covered by Item No.5. To obviate such argument it is necessary to delete the words "which is not sold". The remaining words would cover a situation where fees can be charged where property is intended to be sold but not sold and also where it is not at all intended to be sold.

The fees structure in respect of Item No.4 can be in line with the structure provided in Item No.2.

Therefore it is submitted that in the revised rules fees structure as per following table may be incorporated.

Rule 591. Fees of Receiver :- Unless otherwise ordered by the Judge, the Court Receiver shall charge fees according to the following scale:-

SR. NO	Scale of fees	Per cent
1.	On Rents, Royalties or licence fees recovered..	6
2.	On outstanding recovered except as provided in item 3 below:- On the first Rs.2,00,000/- or fraction thereof On the next Rs.2,00,000/- or fraction thereof On the next Rs.1,00,000/- or fraction thereof On any further sum over Rs.5,00,000/-	5 3 2 1
3.	On outstanding recovered from a Bank or from a public servant without filing a suit...	1
4.	On sale of properties movable or immovable calculated on the total value realised in any one estate:- On the first Rs.2,00,000/- or fraction thereof On the next Rs.2,00,000/- or fraction thereof On the next Rs. 1,00,000/- or fraction thereof On any further sum over Rs.5,00,000/-	3 2 1/2 2 1
5.	For taking charge of property on the estimated value.	1
6.	For taking custody of moneys	1
7.	For taking custody of Government Securities or Stocks, Shares, Debentures, Debenture-Stock or other Securities which are not sold on the estimated value.	1
8.	On the interest earned by investment of funds in the custody of the Court Receiver.	5

9. For any special work, not provided for above, such remuneration as the court on the application of the Receiver shall think reasonable.

III. Draft Rule 14.5 (b) :- Period for filing the Court Receiver's account

with the Commissioner : The Court Receiver shall, in the absence of any directions of the Court to the contrary, file in the office of the Commissioner his account from the date of his appointment to the end of the next calendar year within three months from the expiry of the said calendar year and thereafter within three months from the expiry of each subsequent year provided that where important entries in the account do not exceed a dozen on each side, the Court Receiver may file one account for a period not exceeding three years.

This provision is exactly as per Rule 594 (b) of the Bombay High Court Original Side Rules 1980. The same rule was there in 1957 as is evident from the Rule 479 of the said rules. Therefore, this rule has been in existence since 1957 and the same is being incorporated in the draft revised rules.

It needs to be relooked for the following reasons.

(a) Provision of submitting the accounts by the Court Receiver to the office of the Commissioner for Taking Accounts was in practice in 1957 and probably because of the fact that there was no regular audit of accounts of the Court Receiver and the audit used to take place as and when the State Government would depute a special team for audit and it could have been happening after a gap of 5 to ten years. However after 1960 particularly from the year 1963 a full fledged Accounts Officer for internal audit of the office of the Court Receiver has been appointed by the State Government and such officer sits in the office of the Court Receiver and checks the

financial transactions of the office of the Court Receiver on day to day basis. The Officer also submits his internal audit report twice a year. Therefore, now there is already an independent third party authority to verify the day to day monetary transactions of suit accounts in the office of the Court Receiver who also audit them.

(b) Further the existing provisions if interpreted in literal terms require the Court Receiver to submit accounts in each and every case. There are about 15,000/- matters in the office of the Court Receiver and considering the fact that there is no sufficient staff in the office of the Court Receiver as well as in the office of the Commissioner for Taking Accounts, submission of accounts in all matters without any distinction will be an impossible task to be completed by the office of the Commissioner for Taking Accounts.

(c) It appears that the Court Receiver submits accounts to the Commissioner for Taking Accounts in respect of the matters wherein specific order has been passed by the Hon'ble Court. This practice is in consonance with later part of Rule 594 (b) Rule 594 (b) indicates inherent contradictions. On one hand opening paragraphs of the rule puts burden on Court Receiver to submit accounts in respect of every matter and closing paragraph mandates specific order/directions to Court Receiver to submit accounts.

Suggestion "C" :-

In view of the aforesaid reasons the proposed Rule 14.5 (b) may be

63

drafted as follows:

“The Court Receiver shall in case of directions of the Court, file in the office of the Commissioner his account from the date of his appointment to the end of the next calendar year within three months from the expiry of the said calendar year and thereafter within three months from the expiry of each subsequent year provided that where important entries in the account do not exceed a dozen on each side, the Court Receiver may file on account for a period not exceeding three years.”

IV. Rule 512 - Procedure when Receiver fails to file accounts etc:- In the High Court Original Side Rules of 1980 as per Rule 512 Commissioner has been empowered to call the High Court Receiver to show cause why accounts are not filed, if the Court Receiver fails to file the accounts. This provision was there in the 1957 Rules also. At the time when rules of 1957 and 1980 were framed the office of the Court Receiver was manned by the Officer promoted from the staff of the High Court Receiver like Commissioner for Taking Accounts. However, after the amendment of the High Court Original Side Rules carried out in the year 2004 Judicial Officers of Senior Civil Judge Cadre are appointed as High Court Receiver and it will be an embarrassing that an Officer issues a notice to the Judicial Officer.

In the Revised Rules para 33.22 is as follows:

Rule 33.22 Procedure when Receiver fails to file account, etc. :-

- (a) Where a receiver neglects to file his account as provided in these Rules or to get it**

passed, the Commissioner may require the Receiver and the parties or any of them to attend the office of the Commissioner to show cause why such account has not been filed or if filed, why the passing thereof has not been proceeded with and thereupon the Commissioner may give such directions as to him may seem proper.

(b) If the Commissioner does not see fit to require the Receiver or the parties to attend as aforesaid, or if he shall not be satisfied with the explanation offered to him, the Commissioner shall make a report in the matter and after informing the Receiver and the parties transmit it to the Officer designated by Registrar General. The Officer designated by Registrar General shall place such report before the Court. The Officer designated by Registrar General shall notify the date on which the report is to be placed before the Court. If a party has appeared in person the officer designated by Registrar General shall give notice of the date to such party. The Court may pass such order on the report as may seem just.

63

It seems that the Honourable committee must have considered the aforesaid aspect and in the revised rules the provisions empowering the Commissioner for Taking Accounts to call the High Court Receiver is not there and it is only in respect of the Receiver that is the Receiver appointed other than High Court Receiver.

V. Amendment in the Rules for preservation and destruction of records of the office of Court Receiver, High Court, Bombay.

As per Appendix III to the Bombay High Court Original Side Rules, the High Court has framed the rules under Sec 3 of Destruction of Record Act of 1917 in regard to the records of the office of the original side of High Court.

Rules 52 – 64 provide for Preservation and Destruction of records in the office of Court Receiver, High Court, Bombay and Rules 3 – 15 are in respect of the Preservation and Destruction of records in the office of Prothonotary & Senior Master, High Court, Bombay.

The Court Receiver is appointed as per order passed by the Hon'ble Court in Notice of Motion or Chamber Summons taken out by party in the pending suit before the High Court or City Civil Court. The records of the pending suit i.e. Plaint, written statement as well as orders in the interlocutory applications are preserved by the office of Prothonotary & Senior Master.

As per Rule 11(D)(i) all the orders in the interlocutory applications are to be preserved in respect of suit matters and Appeals including the Tax and Testamentary matters for a period of six years and this period of six years is counted from the date of final decision of the case either by High Court or the Supreme Court.

In Rule 11 A-F there is no specific provision about preservation of papers and applications in Notice of Motion. However as per Rule 11(D)(ix) all the papers not otherwise provided by this rule are to be preserved for six years. So the papers of Notice of Motion can be said to be covered by Rule 11 (i) and 11(D)(ix) they being interlocutory applications and orders therein. Thus the papers, orders appointing High Court Receiver are preserved by the office of Prothonotary & Senior Master for a period of six years.

However, as per Rule 60 (A)(i-ix) the copies of order appointing Receiver together with the copies of pleadings, affidavits, Notice of Motion, copy of order discharging the Court Receiver, copies of other order of Court Receiver in the matter, report of the Court Receiver, Judge's order thereon, notes of meeting etc. are to be preserved for a period of twelve years from the date of closing of account in the suit /matter.

Normally Court Receiver is discharged when the matter is disposed of by the Hon'ble Court or in certain cases before the matter is disposed of. Notices of Motions are not kept in the office of Court Receiver and as per the practice the Court Receiver is not the custodian of original Notice of Motion.

The provision of keeping the records for six years after the disposal of the suit i.e. Notice of Motion etc. by the Prothonotary & Senior Master indicates that the original Notice of Motion and orders can be destroyed after six years when the matter is disposed of. However, the Court Receiver has to keep orders in respect of such Notice of Motions which are not original orders for twelve years after preparation of Final Statement.

Period of twelve years is apparently a longer time and when original papers can be destroyed after six years of the final disposal of the matter on similar lines the secondary papers i.e. orders appointing the Court Receiver

65
67

66
68

and further action taken by the Court Receiver can also be preserved for the period necessary to be kept keeping in mind period of limitation.

As a part of his duties, Receiver takes possession or custody of the immovable or movable properties. Thereafter, as per the order of the Court, he hands over possession of these properties to the persons from whom possession has been taken or person as directed by the Court. In case of claim over immovable property period of limitation for filing the suit is 12 (twelve) years. Similarly, as regards, movable property, period of limitation is three years. Therefore, it will be in fitness of things if the rule is amended by incorporating provisions to preserve the files in respect of immovable properties for the period of 12 (twelve) years from the date of closing the account and in respect of movable properties three years from the date of closing the accounts. Date of closing of accounts is invariably after the date of disposal of the suit/matter.

Suggestion :- "D" :-

Accordingly, opening line of Rule 60(A) be amended as follows :-

- a) **the following shall be preserved for 12 (twelve) years from the date of closing the account in respect of suits and/or matters involving immovable properties and for the period of three years in respect of suits and/or matters pertaining to movable properties.**

Tel. No.(O) 2267 1015

No. Reg(J-II)/ 27 /2012
Date : 3rd May 2012.

From :
D. R. Shirasao,
Registrar (Judl.-II),
High Court, Appellate Side,
Bombay.

To :
The Registrar (O.S.) /
Prothonotary and Senior Master,
High Court, Bombay.

69
Genl. Secy. Office
Prothonotary & S. M.
High Court, Appellate Side
Inward No. 30K
Date: 4 MAY 2012

B
4 MAY 2012

Sub : Draft of Unified and Revised Rules (Original Side and Appellate Side) prepared by the High Court Rules Review Committee.

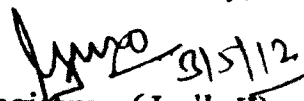
-0-0-0-

Sir,

With reference to the subject above, I am forwarding herewith 'Rules 11.1 to 11.15 in Chapter 11 – Search and Copies'.

You are requested to place the same before High Court Rules Review Committee for consideration / insertion in place of draft rules published on High Court website.

Yours faithfully,


Registrar (Judl.-II)

CHAPTER 11

SEARCH AND COPIES

- 11.1 **Contents of search application.**—An application for search shall bear the court-fee stamp of the prescribed value and shall state precisely the number of the proceeding the record of which the search is sought; and if the application is for the search of a register prescribed by these rules, the description of and the year of the register.
- 11.2 **Search in presence of officer and hours of search.**—The search shall be made in the presence of an Officer of the Court between the hours of 11 a.m. and 4 p.m. on full working days and 11 a.m. and 1.30 p.m. on Saturdays.
- 11.3 **Application for search by third party to be supported by affidavit.**—An application for search or certified copies presented by a person not a party to the proceeding shall be accompanied by an affidavit stating the grounds on which the search is required. The application may be rejected if the grounds thereof are considered insufficient or if sufficient cause is not made out; or may be granted on payment of prescribed fees and charges.
- 11.4 **Assistant Registrar to deal with search applications.**—All applications for search shall be dealt with by the Assistant Registrar.
- 11.5 **Certified copies of documents to a party to suit or matter.**—The Prothonotary and Senior Master or Assistant Registrar of Certified Copy Department shall, on the application of any party to a suit or matter, grant certified copies of pleadings, original documents, orders and judgment and entries taken on Record in the suit or matter, on payment of the prescribed fees and charges. When the party applies for the certified copy of a part of a document on record, the same can be given only after obtaining permission from Prothonotary and Senior Master or concerned Registrar.
- 11.6 **Deposit for certified copies.**—The Court Fee Stamp as may be prescribed by the State Government, from time to time, hereinafter, under the Bombay Court Fees Act shall be affixed on the application for issue of Certified Copy. It shall be mentioned on application if the certified copy is required ordinarily or urgently. The applicant shall mention in application if he is party to proceeding or not. If the applicant is not party to proceeding, then he will have to give affidavit stating therein for what purpose the certified copy is required. However the applicant filing application on behalf of State or Central Government, will not be required to give such affidavit. Every application for a certified copy of any Judgment, Decree or Order and Minutes of Order shall be accompanied by such deposit as may be prescribed. Any further charges that may be found to be due shall be paid before the copy is furnished. If the amount deposited is found to be in excess of the actual charges, the excess shall be returned when the copy is furnished.

71

Provided that, no such deposit shall be necessary when the application is made by or on behalf of the State of Maharashtra or the Union of India but on the undertaking of the Advocate concerned that charges will be paid irrespective of whether the certified copies are eventually collected or not.

11.7 Certified Copies.—

The certified copies of the documents shall be supplied free of cost to the Registrar when the same are required by him for the purposes of any prosecution or proceeding which is filed by him under the directions of this Court or under the administrative orders of the Honourable the Chief Justice or the Administrative Judges or for use in any proceeding in which he is made a party in his official capacity.

11.8 Charges for certified copies.—

- (a) The rates for obtaining the certified copies of documents shall be as set out in the table at Appendix NNN to these Rules.
- (b) When Advocate or a party applies for more than one certified copy of any document, he may also state in the application itself, whether he requires carbon copies of the said document. In such cases, the Office shall issue to him a maximum of five carbon copies (in addition to the original certified copy at full rates) and shall charge for each such carbon copy one fourth of the fee prescribed for a single certified copy of the document in question with a minimum of 15 paise.

11.9 Applicant to state whether copy is required for private use or otherwise.— Every application for a certified copy shall state whether the copy is required for the private use of the person applying for it or otherwise. When the certified copy is required for a purpose other than private use, the requisite Court fee under Articles 24, 25 and 27 of Schedule II to the Bombay Court Fees Act, 1959, shall be paid in addition to the fees prescribed by rule 270.

11.10 Applications for copies liable to stamp-duty.—All applications for certified copies liable to stamp-duty under Article 26 of Schedule I to the Bombay Stamp Act, 1958, shall be accompanied by the stamp-paper of the appropriate denomination.

11.11 Private copies may be certified as true copies.—Copies of the Judgment or any document on record in any civil proceeding in this court may, on the orders of the Prothonotary and Senior Master or Registrar, Appellate Side, be certified as true copies, upon an application made in that behalf, provided that the copies sought to be certified are neatly typed on good paper. In such case, only comparing fees shall be levied according to the scale of fees prescribed. In no case xerox copies shall be so certified.

72 14

11.12 The above rules to apply to certain other offices.—The rules contained in this chapter shall, with any necessary modifications, apply to applications for search of proceedings and for certified copies of documents in the offices of the Commissioner for Taking Accounts, the Court Receiver, the Taxing Master, the Sheriff of Mumbai and the Accounts Officer.

11.13 ¹Supply of copies of documents etc. free of costs to the High Court or District Court Legal Aid Committee and the Supreme Court Legal Aid Committee. — Where Certified copies of documents, orders, judgments, etc. are bona fide required in connection with free legal aid to indigent persons, one copy of each such document, order, judgment, etc. shall be supplied free of cost to the High Court or District Court Legal Aid Committee and the Supreme Court Legal Aid Committee :

1. Added by Notification No. P. 1618/1977, Dt. 6-11-1985.

Provided that Court which has the custody of such documents, orders, judgments, etc. may in its discretion, grant more than one copy if bona fide required in connection with free legal aid to indigent persons.]

²10. Where certified copy is applied for by State Government or any Officer of the Government of Maharashtra ³(or Government of Goa) on behalf of State, the Certified Copy shall be furnished free of cost.]

2. Notification No. P. 3605/98, Dt. 13/14-7-1998 published in M.G.G., Dt. 3-12-1998, Pt. 4-C, pg. 1291.

3. Added by Notification No. P. 3605/98, Dt. 30-10-1999, published in M.G.G., IV-C, dated 12.6.2008.

11.14 Notwithstanding anything contained in the preceding rules of this Chapter -

(1) Where an order of acquittal has been reversed by the High Court and an accused has been sentenced to imprisonment and in every case where the judgment is appealable, a certified copy of the judgment shall be supplied, on an application made by the accused, free of cost provided however that where a sentence of death is passed or confirmed by the High Court a certified copy of the judgment shall be immediately given to the accused free of cost whether or not he applies for the same.

(2) In every other case where an accused is in jail and if he applies for it, a certified copy of judgment shall be supplied to him free of cost.

73

15

4

11.15 Ordinary copies to be furnished within ten, and urgent copies within five working days. — An ordinary copy shall be supplied within ten working days from the date when the requirements regarding the deposit of estimated charges, affidavit, etc., are complied with or the original becomes ready for a certified copy being supplied whichever is later. An urgent copy shall be supplied within five working days from the said date of payment of the extra court-fee and charges, unless the Deputy Registrar orders it to be supplied at an earlier date.

If urgent copy is not supplied within 5 working days, the same shall be considered as application for getting copies in ordinary manner and shall be charged accordingly.

288



74

JUSTICE B.P.DHARMADHIKARI.

"Sunit", Bungalow No.27A,
Opp. Vijay Officer's Club,
Civil Lines, Nagpur - 01.

23rd April, 2012.

To,
The High Court Rules Review Committee,
Mumbai.

General Department
Prothonotary's Office
High Court, Bombay
Inward No. 234
Date: 2 MAY 2012

B
2 MAY 2012

Subject : Draft of Unified and Revised Rules (Original Side and Appellate Side), prepared by the High Court Rules Review Committee headed by Hon'ble Shri Justice B.H. Marlapalle (Retd).

Hon'ble Members of the Review Committee,

I place the following few lines for your kind consideration after part-reading of the draft.

In Chapter 24, dealing with Writ Petitions under Article 226 and Applications under Article 227, in Clause 24.1 (a) the definition of "order" has been changed to include even administrative orders. The said orders also need not be passed in any suit or proceedings as per present requirement.

In Clause (b), the expressions "Subordinate Court" and "Subordinate Courts or Tribunals" are separately used, but defined to mean same thing. This assumes importance because in Clause 24.3(b) Hon'ble Single Judge has been authorized to dispose

Shri. Samis
Pl. approved
K.

Submitted Respectfully
to the Registrar (G.S.) /
Prothonotary & Co. Clerk

75

2

of all petition impugning orders of "Subordinate Courts". There word "Tribunal" is not employed

Clause 24.1(b) permits addition to list of Tribunals by notification. The Tribunals which are covered under Article 227 are, therefore, not automatically covered? Similarly, all quasi judicial bodies therefore, may not be viewed as Tribunals. In Sub-clause (iv), last line "excluding the Courts and Tribunals referred to above" is perhaps redundant. In Clause (v) the powers with Division Bench is a legislative power? The Rule of precedent need not be incorporated through such provision.

In Rule 24.2, there is overlapping in Clauses (a) and (b).

In said Clauses, Clause (b) can be eliminated by inserting appropriate words at the end of Clause (a). Similarly, in existing Clause (b), the word "Tribunal" does not find place.

In Clause (c) instead of word "vires" the words indicating challenge to validity of Law or subordinate legislation framed directly thereunder need to be used?

In Clause 24.2 (b), the same repetition appears and it can be appropriately amalgamated with Clause 24.2 (a).

In Chapter 18 dealing with Jurisdiction (Civil and Criminal), other than Original, in Rule 18.2, (a)(i)(A) - explanation, the use of words "highest of" and "as well as" both together create

o

4
76

some confusion. Has it to be highest of principal value of the subject matter involved in appeal or cross appeal, or then it has to be total of both. Similarly, in Clause (C) Appeal has been contemplated from decree under Section 144 of the Code of Civil Procedure.

In clause (b) dealing with Criminal matters, clause (i)(A) (III) appears to be redundant. In (IV) revision to be entertained by the learned Single Judge is perhaps intended to be where offence punishable is with sentence of imprisonment "not" exceeding 10 years or death. This word "not" is missing in Clause (IV). In Clause (VI) the words "and in the meanwhile" appears to be ~~surplusage~~ ^{unnecessary}.

The sequence in which Capital and Small alphabets or numbers are used, should be changed ?

Yours sincerely,


(JUSTICE B.P.DHARMADHIKARI)

SUGGESTIONS/ COMMENTS BY MR. JUSTICE ANOOP V. MOHTA:-

Drafting of Rules under Section 82 of the Arbitration and Conciliation Act, 1996 (Arbitration Act, 1996)- Whether it is a necessity?

2 Section 82 of the Arbitration Act, 1996 empowers the Hon'ble High Court to make Rules consisting with the Act in respect of all proceedings before the Court under the Act.

3 Section 84 of the Act empowers the Central Government to make Rules for carrying out the provisions of the Act. The Central Government has not framed any Rules till this date.

4 We have already framed Rules under Section 82 of the Arbitration Act by deleting the earlier Rules framed under Arbitration Act of 1940 which are Rules 328A (1) to (9) by Government Gazette dated 26/12/1996. (See in Civil Manual).

5 We have also framed Bombay High Court (Original Side) Rules referring to the Arbitration Act, 1996, those requisite Rules...

803A to 803K (by notification dated 18/11/1996).

6 Section 89 of the Civil Procedure Code provides for settlement of disputes outside the Court covering the Arbitration also, specifically provides "(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act." (w.e.f. 1/7/2002)

7 In view of above, it is clear that even the Arbitration Proceedings initiated or commenced through Section 89 and/or otherwise are governed in all respect by the provisions of the Arbitration Act, 1996. Alternative Dispute Resolution Rules so framed under the CPC referring to clause (d) of Sub Section (2) of Section 89 of the CPC has also endorsed the same. (See H.C. Notification dated 11/9/2007)

8 I am not against framing additional Rules and/or necessary Rules as contemplated under Section 82 of the CPC. However I am of the view that if there are lacunas in above Rules and or procedure for arbitration in certain areas, fields and or things, then in absence of any provisions, necessary Rules and guidelines should be

issued. But, those guidelines and Rules must be consistent with the provisions of the Act. No foreign or new procedure may be added in the Rules.

9 The Rules framed under Section 82 cannot be used and/or utilized to prepare a parallel and/or additional procedure inconsistent with the Arbitration Act, 1996, some are as follows-

- a) Third party claims and or joining of finding qua third party while resolving the dispute. In absence of any agreement/ consent, no third person or party cannot be permitted to participate in the Arbitration proceedings. Therefore, there is no question of passing any binding order against third person by summoning in the Arbitration proceedings by the Arbitrator.
- b) The Award once attained finality through the procedure of Section 34 and 37, is enforceable as a decree. There is no question of passing any decree by the Court on receipt of the award from the Arbitrator.
- c) There is no provision and or power under th.

Arbitration Act, 1996 to suspend the Arbitration.

- d) In view of Section 9 and 17 which deal with the interim measures, there is no question of reporting to the Court. The party at any time can file a Petition for interim measures in the Court under Section 9 of the Arbitration Act, 1996. The Arbitrator under Section 17 can pass appropriate interim measures independently.
- e) The Arbitration act itself provides various stages or the aspect to be taken care of, once the Arbitration proceeding and hearing commenced. (See Sections 18 to 33)
- f) The Act also provides how to fill the vacancies. (See Sections 11, 14 and 15 of the Act).
- g) The CPC and/or the Evidence Act are not specifically made applicable. (Section 19)
- h) There are specific provisions even to grant interest. However, all these provisions are subject to "agreement of the parties" and/or "unless otherwise agreed". Therefore, by the proposed Rules, in my view, it is not possible to restrict the

parties right to have their own procedures to be followed and/or adopted, while dealing with their disputes before the Arbitrator.

- i) There is no provision under the Act to obtain permission from the Court to file new different claim or counter claim before the Arbitrator.
- j) In view of Section 27 of the Arbitration Act, 1996, the Arbitrator may not be permitted to issue summons to the witnesses directly.
- k) In the Court appointed arbitration, the remuneration, costs, expenses may be fixed or finalized. Under the Act, the parties are permitted to fix and/or finalize the remuneration, costs and/or expenses.

10 Above are certain basic observations which the Hon'ble Committee may consider before finalizing these Rules. Above aspects if we take into consideration, in my view, draft Rule needs reconsideration.

11 The existing Arbitration Rules as mentioned ab. may be

82

taken note of before bringing these new Rules into force. The existing Rules may be amended on various procedural aspect which are missing.

12 For all the Sections where filing/application is necessary, prescribed forms/norms may be prescribed.

13 Guidelines may be prescribed for Arbitrator who conduct the Arbitration proceedings for expediting the matter, as parties otherwise entitled to agree for their own procedure under the Act.

14 The Hon'ble Supreme Court as well as various High Courts have elaborated and interpreted the sections of the Arbitration Act covering most of the basic aspects of Arbitration, in all respect.

15 It is also desirable to note that a bill to amend the Arbitration Act is already in pipeline, that may also need to be taken note of while framing the Rules, now.

16 The above observations are just my personal views on the subject.



Date :- 29 February 2012.

To,

Hon'ble Mr. Mohit S. Shah,
Chief Justice,
High Court of Judicature at Bombay.
Bombay.

Subject:- Transfer of "Arbitration matters" to the City Civil Court.

My Lord the Chief Justice,

After having read the minutes throughly of the Full Court meeting dated 10 February 2012, specially Subject 4 relating to "The Arbitration matters" I am expressing my views as under:-

An impression is created that all Arbitration matters are transferable to the City Civil Court in view of the enhancement of City Civil Court pecuniary jurisdiction, but the situation is contrary. Therefore, the following observations.

- 1 For the purpose of Section 2(i) (e) of the Arbitration and Conciliation Act, 1996 (the Arbitration Act), the Bombay High Court is "the Principal Civil Court" having Ordinary Original Civil Jurisdiction for the purpose of part-I i.e. Section 1 to 43 of the Arbitration Act, 1996.

It covers basic Petitions/Applications under Section

9, 34, 37 and 42.

2 Clause 12 of the Letters Patent Act is relevant and decisive factor than Section 20 of the Civil Procedure Code (CPC).
[(2006) 11 S.C.C. 521, Jindal Vijayanagar Steel (JSW Steel Ltd. Vs. Jindal Praxair Oxygen Co. Ltd.).]

3 Section 11 of the Arbitration Act being provides exclusive Jurisdiction to the Chief Justice and/or designated High Court Judge to entertain applications for appointment of Arbitrator. Therefore, no other Court has jurisdiction to deal with such applications.

4 A Full Bench of Bombay High Court, 2007 (3) Bom. C.R. 393, Fountain Head Developers & Ors. Vs. Maria Arcangela Sequeira, has observed in paragraph No. 9 that-

“The pecuniary jurisdiction of a Court, therefore, has no significance for the purposes of the Act of 1996”.

It is also observed that-

“In other words, the pecuniary jurisdiction is no longer a material for deciding the jurisdiction of a Court being the principal Court of Original Jurisdiction for the purpose of a petition under Section 34 of the Arbitration and Conciliation Act.”



85
22

Therefore, the Arbitration matters which are maintainable in High Court having Ordinary Original Civil Jurisdiction and being the principal Civil Court, the aspect of pecuniary jurisdiction as observed loses its importance.

- 5 The execution/enforcement of award/decrees as contemplated under Section 36 of the Act, will be governed accordingly, but subject to the provisions of the Civil Procedure Code.
- 6 Part-II of the Arbitration Act (Section 43 to 49) deals with the Foreign Award, its enforcement and its challenge. The above meaning of "Court" is relevant even for these Sections.
- 7 An explanation to Section 47 of the Arbitration Act, has made it further clear that the meaning of "Court" for the purpose of Chapter-I and Part-II of the Arbitration Act, shall be as per Section 2(i)(e). So is the position of the Appellate provision under Section 50 of the Arbitration Act.

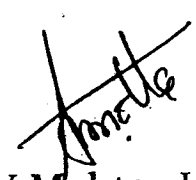
We are not concerned, at this stage, the choices of Court jurisdiction, out of two or more, the parties may

86
74
agree. And also the aspect of Section 42 and such other provisions.

- 8 Therefore, the Arbitration matters which are maintainable only in the Original side of the High Court, in view of above, cannot be transferred to the City Civil Court.

Therefore, the original suggestion/recommendation (Subject 4) dated 10 February 2012, Item-(v), "Arbitration matters" be retained though the situation may cover by Clause-(iii) of the exceptions to the main suggestion as approved.

Yours


(Anoop V. Mohta, J.)

COPY TO:-

✓ The Hon'ble,
Chairman of the
Rule Committee.