THE FIRST SCHEDULE

ORDER I

PARTIES TO SUITS

RULES

1. Who may be joined as plaintiffs.
2. Power of Court to order separate trials.
3. Who may be joined as defendants.
4. Court may give judgment for or against one or more of joint parties.
5. Defendant need not be interested in all the relief claimed.
6. Joinder of parties liable on same contract.
7. When plaintiff in doubt from whom redress is to be sought.
8. One person may sue or defend on behalf of all in same interest.
9. Misjoinder and nonjoinder.
10. Suit in name of wrong plaintiff.
    Court may strike out or add parties.
    Where defendant added, plaint to be amended.
11. Conduct of suit.
12. Appearance of one of several plaintiffs or defendants for others.
13. Objections as to nonjoinder or misjoinder.

ORDER II

FRAME OF SUIT

1. Frame of suit.
2. Suit to include the whole claim.
   Relinquishment of part of claim.
   Omission to sue for one of several reliefs.
3. Joinder of causes of action.
4. Only certain claims to be joined for recovery of immoveable property.
5. Claims by or against executor, administrator or heir.
6. Power of Court to order separate trials.
7. Objections as to misjoinder.

ORDER III

RECOGNIZED AGENTS AND PLEADERS

RULES

1. Appearances, etc., may be in person, by recognized agent or by pleader.
2. Recognized agents.
3. Service of process on recognized agent.
4. Appointment of pleader.
5. Service of process on pleader.
6. Agent to accept service.
Appointment to be in writing and to be filed in Court.

ORDER IV

INSTITUTION OF SUITS

1. Suit to be commenced by plaint.
2. Register of suits.

ORDER V

ISSUE AND SERVICE SUMMONS

Issue of Summons

1. Summons.
2. Copy or statement annexed to summons.
3. Court may order defendant or plaintiff to appear in person.
4. No party to be ordered to appear in person unless resident within certain limits.
5. Summons to be either to settle issues or for final disposal.
6. Fixing day for appearance of defendant.
7. Summons to order defendant to produce documents relied on by him.
8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.

Service of Summons

9. Delivery or transmission of summons for service.
9A. Summons given to the plaintiff for service.
10. Mode of service.
11. Service on several defendants.
12. Service to be on defendant in person when practicable or on his agent.

13. Service on agent by whom defendant carries on business.

14. Service on agent in charge in suits for immoveable property.

15. Where service may be on adult member of defendant's family.

16. Person served to sign acknowledgment.

17. Procedure when defendant refuses to accept service, or cannot be found.

18. Endorsement of time and manner of service.

19. Examination of serving officer.

19A. Declaration of serving officer.

19B. Simultaneous issue of summons for service by post in addition to personal service.

20. Substituted service.

Effect of substituted service.

Where service substituted, time for appearance to be fixed.

21. Service of summons where defendant resides within jurisdiction of another Court.

22. [*Omitted*]

23. Duty of Court to which summons is sent.

24. Service on defendant in prison.

25. Service where defendant resides out of Bangladesh and has no agent.

26. Service in foreign territory through Political Agent or Court.

26A. [*Omitted*]

27. Service on civil public officer or on servant of railway company or local authority.

28. Service on soldiers, sailors or airmen.

29. Duty of person to whom summons is delivered or sent for service.

30. Substitution of letter for summons.

31. Service of summons when completed.

ORDER VI

PLEADING GENERALLY

RULES

1. Pleading.
2. Pleading to state material facts and not evidence.
3. Forms of pleading.
4. Particulars to be given where necessary.
5. Further and better statement, or particulars.
6. Condition precedent.
7. Departure.
8. Denial of contract.
9. Effect of document to be stated.
10. Malice, knowledge, etc.
11. Notice.
12. Implied contract, or relation.
13. Presumptions of law.
14. Pleading to be signed.
15. Verification of pleadings.
16. Striking out pleadings.
17. Amendment of pleadings.
18. Failure to amend after order.

ORDER VII

PLAINT

1. Particulars to be contained in plaint.
2. In money suits.
3. Where the subject-matter of the suit is immoveable property.
4. When plaintiff sues as representative.
5. Defendant's interest and liability to be shown.
6. Grounds of exemption from limitation law.
7. Relief to be specifically stated.
8. Relief founded on separate grounds.
9. Procedure of admitting plaint.
   Concise statements.

10. Return of plaint.
Procedure on returning plaint.

11. Rejection of plaint.

12. Procedure on rejecting plaint.

13. Where rejection of plaint does not preclude presentation of fresh plaint.

Documents Relied on in Plaint

14. Production of documents along with the plaint.

15. Statement in case of documents not in plaintiff's possession or power.

16. Suits on lost negotiable instruments.

17. Production of shop-book.
Original entry to be marked and returned.

18. Inadmissibility of document not produced when plaint field.

ORDER VIII

WRITTEN STATEMENT AND SET-OFF

1. Written statement.

2. New facts must be specially pleaded.

3. Denial to be specific.

4. Evasive denial.

5. Specific denial.

6. Particulars of set-off to be given in written statement.
Effect of set-off.

7. Defence or set-off founded on separate grounds.

8. New ground of defence.

9. Subsequent pleadings.

10. Procedure when party fails to present written statement called for by Court.

ORDER IX

APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

RULES

1. Parties to appear on day fixed in summons for defendant to appear and answer.
2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.
3. Where neither party appears, suit to be dismissed.
4. Plaintiff may bring fresh suit or Court may restore suit to file.
5. Dismissal of suit where plaintiff, after summons returned unserved, fails for one month to apply for fresh summons.
6. Procedure When only plaintiff appears.
   When summons duly served.
   When summons not duly served.
   When summons served, but not in due time.
7. Procedure where defendant appears on day or adjourned hearing and assigns good cause for previous non-appearance.
8. Procedure where defendant only appears.
9. Decree against plaintiff by default bars fresh suit.

9A. Directly setting aside dismissal.

10. Procedure in case of non-attendance of one or more of several plaintiffs.
11. Procedure in case of non-attendance of one or more of several defendants.
12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

Setting aside Decrees Ex-parte

13. Setting aside decree *ex parte* against defendant.

13A. Directly setting aside *ex parte* decree.

14. No decree to be set aside without notice to opposite party.

ORDER X

EXAMINATION OF PARTIES BY THE COURT

RULES

1. Ascertainment whether allegations in pleadings are admitted or denied.
2. Oral examination of Party or companion of party.
3. Substance of examination to be written.
4. Consequence of refusal or inability of pleader to answer.

ORDER XI

DISCOVERY AND INSPECTION

1. Discovery by interrogatories.
2. Particular interrogatories to be submitted.
3. Costs of interrogatories.
4. Form of interrogatories.
5. Corporations.
6. Objections to interrogatories by answer.
7. Setting aside and striking out interrogatories.
8. Affidavit in answer, filing.
9. Form of affidavit in answer.
10. No exception to be taken.
11. Order to answer or answer further.
12. Application for discovery of documents.
13. Affidavit of documents.
14. Production of documents.
15. Inspection of documents referred to in pleadings or affidavits.
16. Notice to produce.
17. Time for inspection when notice given.
18. Order for inspection.
19. Verified copies.

RULES

20. Premature discovery.
21. Non-compliance with order for discovery.
22. Using answers to interrogatories at trial.
23. Order to apply to minors.

ORDER XII

ADMISSIONS

1. Notice of admission of case.
2. Notice of admit documents.
3. Form of notice.
4. Notice of admit facts.
5. Form of admissions.
6. Judgment on admissions.
7. Affidavit of signature.
8. Notice to produce documents.
9. Costs.

ORDER XIII

PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

1. [*Omitted*]
2. [*Omitted*]
3. Rejection of irrelevant or inadmissible documents.
4. Endorsement on irrelevant or inadmissible documents.
5. Endorsements on copies of admitted entries in books, accounts and records.
6. Endorsements on documents rejected as inadmissible in evidence.
7. Recording of admitted and return of rejected documents.
8. Court may order any document to be impounded.
9. Return of admitted documents.
10. Court may send for papers from is own records or from other Courts.
11. Provisions as to documents applied to material objects.

ORDER XIV

SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON

RULES

1. Framing to issues.
2. Issues of law and of fact.
3. Materials from which issues may be framed.
4. Court may examined witnesses or documents before framing issues.
5. Power to amend, and strike out, issues.
6. Questions of fact or law may by agreement be stated in form of issues.
7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment.
8. Fixing date for final hearing.

ORDER XV

DISPOSAL OF THE SUIT AT THE FIRST HEARING

1. Parties not at issue.
2. One of several defendants not at issue.
3. Parties at issue.
4. Failure to produce evidence.

ORDER XVI

SUMMONING AND ATTENDANCE OF WITNESSES

1. Summons to attend to give evidence or produce documents.
2. Expenses of witness to be paid into Court on applying for summons.
   Experts.
   Scale of expenses.
3. Tender of expenses to witness.
4. Procedure where insufficient sum paid in.
   Expenses of witnesses detained more than one day.
5. Time, place and purpose of attendance to be specified in summons.
6. Summons to produce document.

RULES

7. Power to require persons present in Court to give evidence or produce document.
8. Summons how served.
9. Time for serving summons.
10. Procedure where witness fails to comply with summons.
11. If witness appears, attachment may be withdraw.
12. Procedure if witness fails to appear.
13. Mode of attachment.
14. Court may of its own accord summon as witnesses strangers to suit.
15. Duty of persons summoned to give evidence or produce document.
16. When they may depart.
17. Application of rules 10 to 13.
18. Procedure where witness apprehended cannot give evidence or produce document.
19. No witness to be ordered to attend in person unless resident within certain limits.
20. Consequence of refusal of party to give evidence when called on by Court.
21. Rules as to witnesses to apply to parties summoned.

ORDER XVII

ADJOURNMENTS

1. Court may grant time and adjourn hearing.
Costs of adjournment.
2. Procedure if parties fail to appear on day fixed.
3. Court may proceed notwithstanding either party fails to produce evidence, etc.

ORDER XVIII

HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

1. Right to begin.
2. Statement and production of evidence.

RULES

3. Evidence where several issues.
4. Witnesses to be examined in open Court.
5. How evidence shall be taken in appealable cases.
6. When deposition to be interpreted.
7. Evidence under section 138.
8. Memorandum when evidence not taken down by Judge.
9. When evidence may be taken in English.
10. Any particular question and answer may be taken down.
11. Question objected to and allowed by Court.
12. Remarks on demeanour of witnesses.
13. Memorandum of evidence in unappealable cases.
14. Judge unable to make such memorandum to record reasons of his inability.
15. Power to deal with evidence taken before another Judge.
16. Power to examine witness immediately.
17. Court may recall and examine witness.
18. Power of Court to inspect.
19. Time for completion of hearing.
20. Fixation of suits in the daily cause list, etc.

ORDER XIX

AFFIDAVITS

1. Power to order any point to be proved by affidavit.
2. Power to order attendance of deponent for cross-examination.
3. Matters of which affidavits shall be confined.

ORDER XX

JUDGMENT AND DECREE

1. Judgment when pronounced.
2. Power to pronounce judgment written by Judge's predecessor.
3. Judgment to be singed.

RULES

4. Judgments of Small Cause Courts.
Judgments of other Courts.

5. Court to state its decision on each issue.

5A. Time for drawn up a decree.

6. Contents of decree.

7. Date of decree.

8. Procedure where judge has vacated office before signing decree.

9. Decree for recovery of immoveable property.

10. Decree for delivery of moveable property.

11. Decree may direct payment by instalments,

Order, after decree, for payment by instalments.

12. Decree for possession and mesne profits.

13. Decree in administration suit.

14. Decree in pre-emption-suit.

15. Decree in suit for dissolution of partnership.

16. Decree in suit for account between principal and agent.

17. Special directions as to accounts.

18. Decree in suit for partition of property or separate possession of a share therein.

19. Decree when set-off is allowed.

Appeal from decree relating to set-off.

20. Certified copies of judgment and decree to be furnished.

ORDER XXI

EXECUTION OF DECREES AND ORDERS

Payment under Decree

1. Modes of paying money under decree.

2. Payment out of Court to decree-holder.

Courts Executing Decrees

3. Lands situate in more than on jurisdiction.

4. [*Omitted*]

5. Mode of transfer.

6. Procedure where Court desires than its own decree shall be executed by another Court.

7. Court receiving copies of decree, etc., to file same without proof.

8. Execution of decree or order by Court to which it is sent.

9. Execution by High Court Division of decree transferred by other Court.

Application for Execution

10. Application for execution.

11. Oral application.
Written application.

12. Application for attachment of moveable property not in judgment-debtor's possession.

13. Application for attachment of immoveable property to contain certain particulars.

14. Power to require certified extract from Collector's register in certain cases.

15. Application for execution by joint decree-holder.

16. Application for execution by transferee of decree.

17. Procedure on receiving application for execution of decree.

18. Execution in case of cross-decrees.

19. Execution in case of cross-claims under same decree.

20. Cross-decrees and cross-claims in mortgage-suits.

21. Simultaneous execution.

22. Notice to show cause against execution in certain cases.

23. Procedure after issue of notice.

Process for Execution

24. Process for execution.

25. Endorsement on process.

Stay of Execution

RULES

26. When Court may stay execution.

Power to require security from, or impose conditions upon judgment-debtor.

27. Liability of judgment-debtor discharged.

28. Order of Court which passed decree or of appellate Court to be binding upon Court applied to.

29. Stay of execution pending suit between decree-holder and judgment-debtor.

Mode of Execution

30. Decree for payment of money.

31. Decree for specific moveable property.

32. Decree for specific performance, for restitution of conjugal rights, or for an injunction.

33. Discretion of Court in executing decrees for restitution of conjugal rights.

34. Decree for execution of document, or endorsement of negotiable instrument.

35. Decree for immoveable property.

36. Decree for delivery of immoveable property when in occupancy of tenant.

Arrest and Detention in the Civil Prison

37. Discretionary power to permit judgment-debtor to show cause against detention in prison.

38. Warrant for arrest to direct judgment-debtor to be brought up.

39. Subsistence-allowance.

40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

Attachment of Property

41. Examination of judgment-debtor as to his property.

42. Attachment in case of decree for rent or mesne profits of other matter, amount of which to be subsequently determined.

43. Attachment of moveable property other than agricultural produce, in possession of judgment-debtor.

44. Attachment of agricultural produce.

45. Provisions as to agricultural produce under attachment.

46. Attachment of debt, share and other property not in possession of judgment-debtor.

47. Attachment of share in moveables.

48. Attachment of salary or allowances of public officer or servant of railway company or local authority.

49. Attachment of partnership property.

50. Execution of decree against firm.

51. Attachment of negotiable instruments.

52. Attachment of property in custody of Court or public officer.

53. Attachment of decrees.

54. Attachment of immoveable property.

55. Removal of attachment after satisfaction of decree.

56. Order for payment of coin or currency notes to party entitled under decree.

57. Determination of attachment.

Investigation of Claims and Objections

58. Investigation of claims to, and objections to attachment of, attached property.
Postponement of sale.

59. Evidence to be adduced by claimant.

60. Release of property from attachment.

61. Disallowance of claim to property attached.

62. Continuance of attachment subject to claim of incumbrancer.

63. [*Omitted*]

Sale Generally

64. Power to order property attached to be sold and proceeds to be paid to person entitled.

RULES

65. Sales by whom conducted and how made.

66. Proclamation of sales by public auction.

67. Mode of making proclamation.

68. Time of sale.

69. Adjournment of stoppage of sale.

70. Saving of certain sales.

71. Defaulting purchaser answerable for loss on re-sale.

72. Decree-holder not to bid for or buy property without permission.

Where decree-holder purchases. Amount of decree may be taken as payment.

73. Restriction on bidding or purchase by officers.

Sale of Moveable Property

74. Sale of agricultural produce.

75. Special provisions relating to growing crops.

76. Negotiable instruments and shares in corporations.

77. Sale by public auction.

78. Irregularity not to vitiate sale, but any person injured may sue.

79. Delivery of moveable property, debts and shares.

80. Transfer of negotiable instruments and shares.

81. Vesting order in case of other property.

Sale of Immoveable Property

82. What Courts may order sales.

83. Postponement of sale to enable judgment-debtor to raise amount of decree.

84. Deposit by purchaser and re-sale on default.

85. Time for payment in full of purchase-money.

86. Procedure in default of payment.

87. Notification on re-sale.

RULES

88. Bid of co-sharer to have preference.

89. Application to set aside sale on deposit.

90. Application to set aside sale on ground of irregularity or fraud.

91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.

92. Sale when to become absolute or be set aside.

93. Return of purchase-money in certain cases.

94. Certificate to purchaser.

95. Delivery of property in occupancy of judgment-debtor.

96. Delivery of property in occupancy of tenant.

Resistance to Delivery of Possession to Decree-holder or Purchaser

97. Resistance or obstruction to possession of immoveable property.

98. Resistance or obstruction by judgment-debtor.

99. Resistance or obstruction by *bona fide* claimant.

100. Dispossession by decree-holder or purchaser.

101. *Bona fide* claimant to be restored to possession.

102. Rules not applicable to transferee *lite pendente*.

103. Orders conclusive subject to regular suit.

ORDER XXII

DEATH, MARRIAGE AND INSOLVENCY OF PARTIES

1. No abatement by party's death, if right to sue survives.

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.

4. Procedure in case of death of one of several defendants or of sole defendant.

5. Determination of question as to legal representative.

6. No abatement by reason of death after hearing.

RULES
7. Suit not abated by marriage of female party.
8. When plaintiff's insolvency bars suit.
Procedure where assignee fails to continue suit or give security.
9. Effect of abatement or dismissal.
9A. Directly setting aside abatement or dismissal.
10. Procedure in case of assignment before final order in suit.
11. Application of Order to appeals.
12. Application of Order to proceedings.

ORDER XXIII

WITHDRAWAL AND ADJUSTMENT OF SUITS

1. Withdrawal of suit or abandonment of part of claim.
2. Limitation law not affected by first suit.
3. Compromise of suit.
4. Proceedings in execution of decrees not affected.

ORDER XXIV

PAYMENT INTO COURT

1. Deposit by defendant of amount in satisfaction of claim.
2. Notice of deposit.
3. Interest on deposit not allowed to plaintiff after notice.
4. Procedure where plaintiff accepts deposit as satisfaction in part.
Procedure where he accepts it as satisfaction in full.

ORDER XXV

SECURITY FOR COSTS

1. When security for costs may be required from plaintiff.
Residence out of Bangladesh.
2. Effect of failure to furnish security.

ORDER XXVI

COMMISSIONS

Commissions to Examine Witnesses

1. Cases in which Court may issue commission to examine witness.

RULES

2. Order of commission.

3. Where witness resides within Court's jurisdiction.

4. Persons for whose examination commission may issue.

5. Commission or Request to examine witness not within Bangladesh.

6. Court to examine witness pursuant to commission.

7. Return of commission with depositions of witnesses.

8. When depositions may be read in evidence.

Commissions for Local Investigations

9. Commissions to make local investigations.

10. Procedure of Commissioner. Report and depositions to be evidence in suit. Commissioner may be examined in person.

Commissions to examine Accounts

11. Commission to examine or adjust accounts.

12. Court to give Commissioner necessary instructions. Proceedings and report to be evidence. Court may direct further inquiry.

Commissions to make Partitions

13. Commission to make partition of immoveable property.

14. Procedure of Commissioner.

General Provisions

15. Expenses of commission to be paid into Court.

16. Powers of Commissioners.

17. Attendance and examination of witnesses before Commissioner.

18. Parties to appear before Commissioner.

Commissions issued at the instance of Foreign Tribunals

19. Cases in which High Court Division may issue commission to examine witness.

20. Application for commission.

RULES

21. To whom commission may be issued.

22. Issue, execution and return of commissions, and transmission of evidence to foreign Court.

Exclusion of time taken by Commissioner

23. Exclusion of time taken by Commissioner.

ORDER XXVII

SUITS BY OR AGAINST THE GOVERNMENT OF PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

1. Suits by or against Government.

2. Persons authorised to act for Government.

3. Paints in suits by or against Government.

4. Agent for Government to receive process.

5. Fixing of day for appearance on behalf of Government.

6. Attendance of person able to answer questions relating to suit against Government.

7. Extension of time to enable public officer to make reference to Government.

8. Procedure in suits against public officer.

8A. No security to be required from Government or a public officer in certain cases.

8B. [*Omitted*]

ORDER XXVIIA

SUITS INVOLVING ANY SUBSTANTIAL QUESTION AS TO THE INTERPRETATION OF CONSTITUTION LAW

1. Notice to the Attorney General.

2. Court may add Government as party.

3. Costs when Government added as party.

4. Application of Order to appeals.

ORDER XXVIII

SUITS BY OR AGAINST MILITARY OR NAVAL MEN OR AIRMEN

1. Officers, soldiers, sailors of airmen who cannot obtain leave may authorise any person to sue or defend for them.

RULES

2. Person so authorised may act personally or appoint pleader.

3. Service on person so authorise, or on his pleader, to be good service.

ORDER XXIX

SUITS BY OR AGAINST CORPORATIONS

1. Subscription and verification of pleading.

2. Service on corporation.

3. Power to require personal attendance of officer of corporation.

ORDER XXX

SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

1. Suing of partners in name of firm.

2. Disclosure of partners' names.

3. Service.

4. Right of suit on death of partner.

5. Notice in what capacity served.

6. Appearance of partners.

7. No appearance except by partners.

8. Appearance under protest.

9. Suits between co-partners.

10. Suit against person carrying on business in name other than his own.

ORDER XXXI

SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

1. Representation of beneficiaries in suits concerning property vested in trustees, etc.

2. Joinder of trustees, executors and administrators.

RULES

3. Husband of married executrix not to join.

ORDER XXXII

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

1. Minor to sue by next friend.
2. Where suit is instituted without next friend, plaint to be taken off the file.
3. Guardian for the suit to be appointed by court for minor defendant.
4. Who may act as next friend or be appointed guardian for the suit.
5. Representation of minor by next friend or guardian for the suit.
6. Receipt by next friend or guardian for the suit of property under decree for minor.
7. Agreement or compromise by next friend or guardian for the suit.
8. Retirement of next friend.
9. Removal of next friend.
10. Stay of proceedings on removal, etc., of next friend.
11. Retirement, removal of death of guardian for the suit.
12. Course to be followed by minor plaintiff or applicant on attaining majority.
13. Where minor co-plaintiff attaining majority desires to repudiate suit.
14. Unreasonable or improper suit.
15. Application of rules to persons of unsound mind.
16. Saving for Princes and Chiefs.

ORDER XXXIII

SUITS BY PAUPERS

1. Suits may be instituted in *forma pauperis.*
2. Contents of application.
3. Presentation of application.

RULES

4. Examination of applicant.
If presented by agent, Court may order applicant to be examined by commission.

5. Rejection of application.

6. Notice of day for receiving evidence of applicant's pauperism.

7. Procedure at hearing.

8. Procedure if application admitted.

9. Dispaupering.

10. Costs where pauper succeeds.

11. Procedure where pauper fails.

11A. Procedure where pauper suit abates.

12. Government may apply for payment of court-fees.

13. Government to be deemed a party.

14. Recovery of amount of court-fees.

15. Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.

16. Costs.

ORDER XXXIV

SUITS RELATING TO MORTGAGES OF IMMOVEABLE PROPERTY

1. Parties to suits for foreclosure, sale and redemption.

2. Preliminary decree in foreclosure suit.

3. Final decree in foreclosure suit.

4. Preliminary decree in suit for sale.
Power to decree sale in foreclosure suit.

5. Final decree in suit for sale.

6. Recovery of balance due on mortgage in suit for sale.

7. Preliminary decree in redemption suit.

8. Final decree in redemption suit.

8A. Recovery of balance due on mortgage in suit for redemption.

RULES

9. Decree where nothing is found due or where mortgagee has been overpaid.

10. Costs of mortgagee subsequent to decree.

11. Payment of interest.

12. Sale of property subject to prior mortgage.

13. Application of proceeds.

14. Suit for sale necessary for bringing mortgaged property to sale.

15. Mortgages by the deposit of title-deeds and charges.

ORDER XXXV

INTERPLEADER

1. Plaint in interpleader-suits.

2. Payment of thing claimed into Court.

3. Procedure where defendant is suing plaintiff.

4. Procedure at first hearing.

5. Agents and tenants may not institute interpleader-suits.

6. Charge for plaintiff's costs.

ORDER XXXVI

SPECIAL CASE

1. Power to state case for Court's opinion.

2. Where value of subject-matter must be stated.

3. Agreement to be filed and registered as suit.

4. Parties to be subject to Court's jurisdiction.

5. Hearing and disposal of case.

ORDER XXXVII

SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS

1. Application of Order.

2. Institution of summary suits upon bills of exchange, etc.

3. Defendant showing defence on merits to have leave to appear.

RULES

4. Power to set aside decree.

5. Power to order bill, etc., to be deposited with officer of Court.

6. Recovery of cost of noting non-acceptance of dishonoured bill or note.

7. Procedure in suits.

ORDER XXXVIII

ARREST AND ATTACHMENT BEFORE JUDGMENT

Arrest before Judgment

1. Where defendant may called upon to furnish security for appearance.

2. Security.

3. Procedure on application by surety to be discharged.

4. Procedure where defendant fails to furnish security or find fresh security.

Attachment before Judgment

5. Where defendant may be called upon to furnish security for production of property.

6. Attachment where cause not shown or security not furnished.

7. Mode of making attachment.

8. Investigation of claim to property attached before judgment.

9. Removal of attachment when security furnished or suit dismissed.

10. Attachment before judgment not to affect rights of strangers nor bar decree-holder from applying for sale.

11. Property attached before judgment not to be re-attached in execution of decree.

12. Agricultural produce not attachable before judgment.

13. Small Cause Court not to attach immoveable property.

ORDER XXXIX

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Temporary Injunctions

1. Cases in which temporary injunction may be granted.

RULES

2. Injunction to restrain repetition or continuance of breach.

3. Before granting injunction Court to direct notice to opposite party.

3A. Mode of service of unserved returned notices.

4. Order for injunction may be discharged, varied or set aside.

5. Injunction to corporation binding on its officers.

5A. No order of *ad interim* or temporary injunction without hearing the opposite party.

Interlocutory Orders

6. Power to order interim sale.

7. Detention, preservation, inspection, etc., of subject-matter of suit.

8. Application for such orders to be after notice.

9. When party may be put in immediate possession of land the subject-matter of suit.

10. Deposit of money, etc., in Court.

ORDER XL

APPOINTMENT OF RECEIVERS

1. Appointment of receivers.

2. Remuneration.

3. Duties.

4. Enforcement of receiver's duties.

5. When Collector may be appointed receiver.

ORDER XLI

APPEALS FROM ORIGINAL DECREES

1. Form of appeal.

What to accompany memorandum.
Contents of memorandum.

2. Grounds which may be taken in appeal.

3. Rejection or amendment of memorandum.

4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

Stay of Proceeding and of Execution

5. Stay by appellate Court.
Stay by Court which passed the decree.

6. Security in case of order for execution of decree appealed from.

7. [*Repealed*]

8. Exercise of powers in appeal from order made in execution of decree.

Procedure on Admission of Appeal

9. Registry of memorandum of appeal.
Register of Appeals.

10. Appellate Court may require appellant to furnish security for costs.

Where appellant resides out of Bangladesh.

11. Power to dismiss appeal without sending notice to Lower Court.

12. Day for hearing appeal.

12A. Adjournment in appeal.

13. Appellate Court to give notice to Court whose decree appealed from.

Transmission of papers to Appellate Court.
Copies of exhibits in Court whose decree appealed from.

14. Publication and service of notice of day for hearing appeal.

Appellate Court may itself cause notice to be served.

15. Contents of notice.

15A. Prosecution of an appeal.

Procedure on Hearing

16. Right to begin.

17. Dismissal of appeal for appellant's default.
Hearing appeal *ex parte.*

RULES

18. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.

19. Re-admission of appeal dismissed for default.

19A. Direct re-admission of appeal.

20. Power to adjourn hearing and direct persons appearing interest to be made respondents.

21. Re-hearing on application of respondent against whom *ex parte* decree made.

21A. Direct re-hearing of appeal.

22. Upon hearing, respondent may object to decree as if he had preferred separate appeal.

Form of objection and provisions applicable thereto.

23. Remand of case by Appellate Court.

24. Where evidence on record sufficient, Appellate Court may determine case finally.

25. Where Appellate Court may frame issues and refer them for trial of Court whose decree appealed from.

26. Findings and evidence to be put on record.
Objections to finding.
Determination of appeal.

27. Production of additional evidence in Appellate Court.

28. Mode of taking additional evidence.

29. Points to be defined and recorded.

Judgment in Appeal

30. Judgment when and where pronounced.

31. Contents, date and signature of judgment.

32. What judgment may direct.

33. Power of Court of Appeal.

34. Dissent to be recorded.

Decree in Appeal

35. Date and contents of decree.
Judge dissenting from judgment need not sign decree.

36. Copies of judgment and decree to be furnished to parties.

37. Certified copy of decree to be sent to Court whose decree appealed from.

ORDER XLII

APPEALS FROM APPELLATE DECREES

RULES

1. Procedure.

ORDER XLIII

APPEALS FROM ORDERS

1. Appeals from orders.

2. Procedure.

ORDER XLIV

PAUPER APPEALS

1. Who may appeal as pauper.
Procedure on application for admission of appeal.

2. Inquiry into pauperism.

ORDER XLV

APPEALS TO THE APPELLATE DIVISION

1. "Decree" defined.

2. Application to Court whose decree complained of.

3. Certificate as to value or fitness.

4. Consolidation of suits.

5. Remission of dispute to Court of first instance.

6. Effect of refusal of certificate.

7. Security and deposit required on grant of certificate.

8. Admission of appeal and procedure thereon.

9. Revocation of acceptance of security.

9A. Power to dispense with notices in case of deceased parties.

10. Power to order further security or payment.

11. Effect of failure to comply with order.

12. Refund of balance deposit.

13. Powers of Court pending appeal.

RULES

14. Increase of security found inadequate.
15. Procedure to enforce orders of the Appellate Division.
16. Appeal from order relating to execution.
17. [*Omitted*]

ORDER XLVI

REFERENCE

1. Reference of question to High Court Division.
2. Court may pass decree contingent upon decision of High Court Division.
3. Judgment of High Court Division to be transmitted, and case disposed of accordingly.
4. Costs of reference to High Court Division.
5. Power to alter, etc., decree of Court making reference.
6. Power to refer to High Court Division questions as to Jurisdiction is small causes.
7. Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

ORDER XLVII

REVIEW

1. Application for review of judgment.
2. To whom applications for review may be made.
3. Form of applications for review.
4. Application where rejected.
   Application where granted.
5. Application for review in Court consisting of two or more Judges.
6. Application where rejected.
7. Order of rejection not appealable.
   Objections to order granting application.
8. Registry of application granted, and order for re-hearing.
9. Bar of certain applications.

ORDER XLVIII

MISCELLANEOUS

RULES

1. Process to be served at expense of party issuing. Costs of service.
2. Orders and notices how served.
3. Use of forms in appendices.

ORDER XLIX

HIGH COURT DIVISION

1. Who may serve processes of High Court Division.
2. Saving in respect of High Court Division.
3. Application of rules.

ORDER L

SMALL CAUSE COURTS

1. Small Cause Courts.

ORDER LI.– [Omitted]

APPENDICES TO THE FIRST SCHEDULE

FORMS

A.– PLEADINGS.
1. Titles of Suits.
2. Description of Parties in particular cases.
3. Plaints.
4. Written Statement.
B.– PROCESS.
C.– DISCOVERY, INSPECTION AND ADMISSION.
D.– DECREES.
E.– EXECUTION.
F.– SUPPLEMENTAL PROCEEDINGS.
G.– APPEAL, REFERENCE AND REVIEW.
H.– MISCELLANEOUS.

THE FIRST SCHEDULE

(*See section 121*)

ORDER I

PARTIES TO SUITS

Who may be joined as plaintiffs

1. All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.

Power of Court to order separate trials

2. Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

Who may be joined as defendants

3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise.

Court may give judgment for or against one or more of joint parties

4. Judgment may be given without any amendment–

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

Defendant need not be interested in all the relief claimed

5. It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.

Joinder of parties liable on same contract

6. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

When plaintiff in doubt from whom redress is to be sought

7. Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

One person may sue or defend on behalf of all in same interest

8. (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit.

Misjoinder and nonjoinder

9. No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Suit in name of wrong plaintiff

10. (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

Court may strike out or add parties

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

Where defendant added, plaint to be amended

(4) Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the [1][Limitation Act, 1908], section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

Conduct of suit

11. The Court may give the conduct of the suit to such person as it deems proper.

Appearance of one of several plaintiffs or defendants for others

12. (1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceedings; and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.

Objections as to nonjoinder or misjoinder

13. All objections on the ground of nonjoinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER II

FRAME OF SUIT

Frame of suit

1. Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

---

[1] The words, comma and figure "Limitation Act, 1908" were substituted, for the words, comma and figure "Indian Limitation Act, 1877" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Suit to include the whole claim

2. (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Relinquishment of part of claim

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Omission to sue for one of several reliefs

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.–For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration

A lets a house to B at yearly rent of Taka 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

Joinder of causes of action

3. (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiff having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

Only certain claims to be joined for recovery of immoveable property

4. No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, except–

(a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(b) claims for damages for breach of any contract under which the property or any part thereof is held; and

(c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

Claims by or against executor, administrator or heir

5. No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Power of Court to order separate trials

6. Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.

Objections as to misjoinder

7. All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER III

RECOGNIZED AGENTS AND PLEADERS

Appearances, etc., may be in person, by recognized agent or by pleader

1. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

Recognized agents

2. The recognized agents of parties by whom such appearances, applications and acts may be made or done are–

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

Service of process on recognized agent

3. (1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

Appointment of pleader

4. (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

(3) For the purposes of sub-rule (2) an application for review of judgment, an application under section 144 or section 152 of this Code, any appeal from any decree or order in the suit and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of monies paid into the Court in connection with the suit shall be deemed to be proceedings in the suit.

(4) The High Court Division may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating-

(a) the names of the parties to the suit,

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorised to appear:

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.

Service of process on pleader

5. Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

Agent to accept service

6. (1) Besides the recognized agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Appointment to be in writing and to be filed in Court

(2) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

ORDER IV

INSTITUTION OF SUITS

Suit to be commenced by plaint

1.[1][(1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf a plaint together with as many true copies of the plaint as there are defendants for service of summons upon such defendants.

(1a) The Court fees chargeable for service of summons shall be paid in the case of suits when the plaint is filed, and in the case of all other proceedings when process is applied for.

(1b) A plaintiff shall file, along with the plaint, for each defendant a copy of the summons along with a pre-paid registered acknowledgment due cover with complete and correct address of the defendant written on it.]

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

Register of suits

2. The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

ORDER V

ISSUE AND SERVICE OF SUMMONS

Issue of Summons

Summons

1.[2][(1) When a suit has been duly instituted a summons shall be issued by the officer of the Court appointed in this behalf to the defendant within five working days from the date of filing the suit to appear and answer the claim on a day to be therein specified:

Provided that if the officer of the Court fails to issue the summons within the said period of time, he shall be liable for misconduct:

Provided further that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.]

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

---

1 Sub-rules (1), (1a) and (1b) were substituted, for sub-rule (1) by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

2 Sub-rule (1) was substituted by section 5(a) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

Copy or statement annexed to summons

2. Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement.

Court may order defendant or plaintiff to appear in person

3. (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

No party to be ordered to appear in person unless resident within certain limits

4. No party shall be ordered to appear in person unless he resides–

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house.

Summons to be either to settle issues or for final disposal

5. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

Fixing day for appearance of defendant

6. The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Summons to order defendant to produce documents relied on by him

7. The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

8. Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witnesses

Service of Summons

[1][**9.** (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or through courier service enlisted by the District Judge under sub-rule (4).

Delivery or transmission of summons for service

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and where he is such an officer, the summons may be sent to him by post or in such manner as the Court may direct.

(3) The Court may, in addition to the service of summons under sub-rule (1), on the application of the plaintiff for the issue of a summons for the appearance of the defendant, also direct the summons to be served by means of [2][Short Message Service, Voice Calls, Instant Messaging Services,] fax massage or electronic mail service by the plaintiff at his own cost [3][:

Provided that the proof of such service shall be kept in record.]

(4) The District Judge shall prepare a list of courier services (to be updated from time to time) for the purposes of sub-rule (1), and shall inform all the Civil Courts under his administrative jurisdiction about the list.

---

1 Rules 9 and 9A were substituted by section 5(b) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

2 The words and commas "Short Message Service, Voice Calls, Instant Messaging Services," were substituted for the words "transmission of documents through" by section 9 of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

3 The colon ":" was substituted for the full stop "." and thereafter proviso was inserted by section 9 of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

(5) When a summons is sent to the proper officer or the courier service, he or it shall serve the summons within thirty days from the date of receipt of summons and shall inform the Court in this regard:

Provided that, if the proper officer or the courier service fails to serve the summons within the said period of time, that officer shall be liable for misconduct and in the case of courier service, the District Judge shall exclude it from the list prepared under sub-rule (4).

Summons given to the plaintiff for service

9A. (1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

(2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court-as he may appoint in this behalf and sealed with the seal of the Court.

(3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting the service were a serving officer and the plaintiff shall submit a report to the Court accompanied by an affidavit.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the plaintiff, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.]

Mode of service

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Service on several defendants

11. Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

Service to be on defendant in person when practicable or on his agent

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business

13. (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or character.

Service on agent in charge in suits for immoveable property

14. Where in a suit to obtain relief respecting, or compensation for wrong to, immoveable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Where service may be on [1][adult member] of defendant's family

15. Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any [2][adult member] of the family of the defendant who is residing with him.

Explanation.–A servant is not a member of the family within the meaning of this rule.

Person served to sign acknowledgment

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Procedure when defendant refuses to accept service, or cannot be found

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

---

1 The words "adult member" were substituted for the words "male member" in the maginal heading by section 5(c)(i) of The Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

2 The words "adult member" were substituted for the words "adult male member" by section 5(c)(ii) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons were served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons. Endorsement of time and manner of service

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit. Examination of serving officer

[1][**19A.** A declaration made and subscribed by serving officer shall be received as evidence of the facts as to the service or attempted service of summons. Declaration of serving officer

19B. (1) The Court shall, in addition to, and simultaneously with, the issue of summons for service in the manner provided in rules 9 to 19 (both inclusive), also direct the summons to be served by registered post with acknowledgment due addressed to the defendant or his agent empowered to accept the service at the place where the defendant or his agent actually and voluntarily resides or carries on business or personally works for gain: Simultaneous issue of summons for service by post in addition to personal service

Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post where, in the circumstances of the case, the Court considers it unnecessary.

(2) When an acknowledgment is purporting to be signed by the defendant or his agent is received by the Court or the postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons when tendered to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post with acknowledgment due, the declaration referred to in this sub-rule may be made not-withstanding the fact that the acknowledgment having been lost or mislaid or for any other reason, has not been received by the court within thirty days from the date of issue of the summons.]

---

[1] Rules 19A and 19B were inserted by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

Substituted service

20. (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

[1][(1A) Where the Court under sub-rule (1) pass an order to service the summons by an advertisement in a newspaper, the newspaper shall be a daily newspaper which has circulation in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.]

Effect of substituted service

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Where service substituted, time for appearance to be fixed

(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

Service of summons where defendant resides within jurisdiction of another Court

21. A summons may be sent by the Court by which it is issued [2][* * *] either by one of its officers or by post [3][or through courier service as mentioned in sub-rule (4) of rule 9] to any Court (not being the High Court Division) having jurisdiction in the place where the defendant resides.

22. [*Omitted by the Adaptation of Central Acts and Ordinances Order, 1949.*]

Duty of Court to which summons is sent

23. The Court to which a summons is sent under rule 21 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then returns the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

---

1 Sub-rule (1A) was inserted by section 5(d) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

2 The commas and words ", whether within or without the Province," were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

3 The words, brackets and figurs “or through courier service as mentioned in sub-rule (4) of rule 9” were inserted after the words “by post” by section 5(e) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

Service on defendant in prison

24. Where defendant is confined in a prison, the summons shall be delivered or sent by post [1][or through courier service as mentioned in sub-rule (4) of rule 9] or otherwise to the officer in charge of the prison for service on the defendant.

Service where defendant resides out of Bangladesh and has no agent

[2][**25.** (1) Where the defendant resides out of Bangladesh and has no agent in Bangladesh empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post or through courier service as mentioned in sub-rule (4) of rule 9, if there is postal communication between such place and the place where the Court is situate.

(2) The Court may, in addition to the service of summons under sub-rule (1), on the application of the plaintiff for the issue of a summons for the appearance of the defendant, also direct the summons to be served by means of transmission of documents through fax massage or electronic mail service by the plaintiff at his own cost.]

Service in foreign territory through Political Agent or Court

26. Where–

(a) in the exercise of any foreign or extra [3][territorial] jurisdiction vested in the Government, [4][* * *] a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

---

1 The words, brackets and figures "or through courier service as mentioned in sub-rule (4) of rule 9" were inserted after the words "by post" by section 5(f) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

2 Rule 25 was substituted by section 5(g) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

3 The word "territorial" was substituted, for the word "provincial" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

4 The letter, words and comma "a Political Agent has been appointed, or" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(b) the Government has, by notification in the official Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued under this Code by a Court of [1][Bangladesh] shall be deemed to be valid service,

the summons may be sent to such [2][* * *] Court, by post or otherwise, for the purpose of being served upon the defendant;

and, if the [3][* * *] Court returns the summons with an endorsement signed by [4][* * *] the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

26A. [*Omitted by the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012), section 5(h).*]

Service on civil public officer or on servant of railway company or local authority

27. Where the defendant is a public officer (not belonging to the armed forces of Bangladesh, or is the servant of [5][the railway] or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

---

1 The word "Bangladesh" was substituted, for the words "the Province" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

2 The words "Political Agent or" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

3 The words "Political Agent or" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

4 The words "such Political Agent or by" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

5 The words "the Railway" were substituted, for the letter and words "a railway company" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Service on soldiers, sailors or airmen

28. Where the defendant is a soldier, sailor or airman, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

Duty of person to whom summons is delivered or sent for service

29. (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

Substitution of letter for summons

30. (1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

Service of summons when completed

[1][**31.** If the Court is satisfied that the summons has been served by any of the modes as is mentioned in this Order, it shall be deemed that the summons has been duly served.]

ORDER VI

PLEADINGS GENERALLY

Pleading

1. "Pleading" shall mean plaint or written statement.

Pleading to state material facts and not evidence

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.

---

[1] Rule 31 was added by section 5(i) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

Forms of pleading

3. The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

Particulars to be given where necessary

4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

Further and better statement, or particulars

5. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

Condition precedent

6. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Departure

7. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Denial of contract

8. Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

Effect of document to be stated

9. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

Malice, knowledge, etc.

10. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Notice

11. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

Implied contract, or relation

12. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Presumptions of law

13. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (e.g., consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

Pleading to be signed

14. Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

Verification of pleadings

15. (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

Striking out pleadings

16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

Amendment of pleadings

17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties[1][:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court is of opinion that in spite of due diligence, the party could not have raised the matter before the commencement of trial:

Provided further that if an application for amendment is made after the trial has commenced and the Court is of opinion that the application is made to delay the proceedings, the Court shall make an order for the payment to the objector such cost by way of compensation as it thinks fit.]

Failure to amend after order

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

ORDER VII

PLAINT

Particulars to be contained in plaint

1. The plaint shall contain the following particulars:–

(a) the name of the Court in which the suit is brought;

[2][(b) the name, description and place of residence (including phone or mobile number, national identification number (NID) and email address, if any, of the plaintiff,

(c) the name, description and place of residence (including phone or mobile number, national identification number (NID) and email address, if any, of the defendant so far as they can be ascertained;]

(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

---

1 The colon (:) was substituted for the full-stop (.) and thereafter the provisos were added by section 6 of The Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

2 Clause (b) and (c) were substituted by section 10 of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

(e) the facts constituting the cause of action and when it arose;

(f) the facts showing that the Court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

In money suits

2. Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed:

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for.

Where the subject-matter of the suit is immoveable property

3. Where the subject-matter of the suit is immoveable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers.

When plaintiff sues as representative

4. Where the plaintiff sues in a representative character the plaint shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

Defendant's interest and liability to be shown

5. The plaint shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Grounds of exemption from limitation law

6. Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed.

Relief to be specifically stated

7. Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

Relief founded on separate grounds

8. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly.

Procedure of admitting plaint

9. (1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it; and, if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements.

Concise statements

(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

(3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

(4) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.

Return of plaint

10. (1) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Procedure on returning plaint

(2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

Rejection of plaint

11. The plaint shall be rejected in the following cases:–

(a) where it does not disclose a cause of action:

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

(d) where the suit appears from the statement in the plaint to be barred by any law [1][:

---

[1] A colon (;) was substituted, for the full-stop (.) and thereafter the proviso was added by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not exceed twenty-one days.]

Procedure on rejecting plaint

12. Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

Where rejection of plaint does not preclude presentation of fresh plaint

13. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Documents Relied on in Plaint

Production of documents along with the plaint

[1][**14.** (1) Where a plaintiff relies upon documents in his possession or power as evidence in support of his claims, he shall produce them in Court when the plaint is presented, and shall at the same time deliver the documents to be filed with the plaint.

(2) The Court may return such documents on their being substituted by photostat or true copies attested by the plaintiff's pleader on the undertaking that they will be produced at the time of hearing or whenever asked for by the Court.

(3) Where the plaintiff relies on any other documents not in his possession or power in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint and state in whose possession or power they are.]

Statements in case of documents not in plaintiff's possession or power

15. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

Suits on lost negotiable instruments

16. Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

---

[1] Rule 14 was substituted, for rule 14 by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

Production of shop-book

17. (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (XVIII of 1891), where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

Original entry to be marked and returned

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

Inadmissibility of document not produced when plaint filed

18. (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, 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 [1][:

Provided that the Court shall not grant such leave save in exceptional circumstances.]

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

ORDER VIII

WRITTEN STATEMENT AND SET-OFF

Written statement

[2][**1.** [3]**[**(1) The defendant shall, within thirty working days from the date of service of summons upon him, save as provided in the proviso to sub-section (2) of section 80, present a written statement of his defence:

---

1 A colon (:) was substituted, for the full-stop (.) and thereafter the proviso was added by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

2 Rule I was substituted, by section 5 of the Code of Criminal Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

3 Sub-rule (1) was substituted by section 7 of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

Provided that where the defendant fails, for reasonable grounds, to file the written statement within the said period of thirty working days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not exceed sixty working days from the date of service of summons:

Provided further that if the defendant fails to file the written statement within the said period of sixty working days, the Court shall dispose of the suit *ex parte*.]

(2) Where the defendant relies upon documents in his possession or power as evidence in support of his defence or claim of set off, he shall produce them in Court when the written statement is presented and shall at the same time deliver the documents to be filed with the written statement.

(3) The Court may return such documents on their being substituted by photostat or true copies attested by the defendant's pleader on the undertaking that they will be produced at the time of hearing or whenever asked for by the Court.

(4) Where the defendant relies on any other documents not in his possession or power in support of his defence or claim of set off, he shall enter such documents in a list to be added or annexed to the written statement and state in whose possession or power they are.

(5) A document which ought to be produced in Court by the defendant when the written statement is presented, or to be entered in the list to be added or annexed to the written statement, 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:

Provided that the Court shall not grant such leave in exceptional circumstances.

(6) Nothing in sub-rule (5) applies to documents produced for cross-examination of the plaintiff's witnesses, or in answer to any case set up by the plaintiff or handed to a witness merely to refresh his memory.]

New facts must be specially pleaded

2. The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

Denial to be specific

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Evasive denial

4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Specific denial

5. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

Particulars of set-off to be given in written statement

6. (1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff, demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.

Effect of set-off

(2) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off: but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

Illustrations

(a) A bequeaths Taka 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Taka 1,000 as surety for D; then D sues C for the legacy. C cannot set-off the debt of Taka 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Taka 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.

(d) A sues B on a bill of exchange for Taka 500. B holds a judgment against A for Taka 1,000. The two claims being both definite pecuniary demands may be set-off.

(e) A sues B for compensation on account of trespass. B holds a promissory note for Taka 1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue for C for Taka 1,000. C cannot set-off a debt due to him by A alone.

(g) A sues B and C for Taka 1,000. B cannot set-off a debt due to him alone by A.

(h) A owes the partnership firm of B and C Taka 1,000. B dies, leaving C surviving. A sues C for a debt of Taka 1,500 due in his separate character. C may set-off the debt of Taka 1,000.

Defence or set-off founded on separate grounds

7. Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

New ground of defence

8. Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off may be raised by the defendant or plaintiff, as the case may be, in his written statement.

Subsequent pleadings

9. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

Procedure when party fails to present written statement called for by Court

10. Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER IX

APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE

Parties to appear on day fixed in summons for defendant to appear and answer

1. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs

2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed:

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

Where neither party appears, suit to be dismissed

3. Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

Plaintiff may bring fresh suit or Court may restore suit to file

4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for

his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Dismissal of suit where plaintiff, after summons returned unserved, fails for [1][one month] to apply for fresh summons

5. (1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of [2][one month] from the date of return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that–

(a) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or

(b) such defendant is avoiding service of process, or

(c) there is any other sufficient cause for extending the time, in which case the Court may extend the time for making such application for such period as it thinks fit.

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Procedure when only plaintiff appears

When summons duly served

When summons not duly served

When summons served, but not in due time

6. (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then–

(a) if it is proved that the summons was duly served, the Court may proceed *ex parte*;

(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

(c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

---

[1] The words "one month" were substituted for the words "three months" in the marginal heading by section 8(a) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

[1] The words "one month" were substituted for the words "three months" by section 8(b) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance

7. Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Procedure where defendant only appears

8. Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Decree against plaintiff by default bars fresh suit

9. (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

Directly setting aside dismissal

[1][**9A.** (1) Notwithstanding anything contained in rule 9 or any other law, the Court may, in order to avoid delay and expedite disposal, directly set aside the dismissal without requiring the plaintiff to adduce evidence to satisfy it about

---

[1] Rule 9A was inserted by section 3 of the Code of Civil Procedure (Amendment) Act, 2006 (Act No. VIII of 2006).

sufficient causes as required under rule 9, but requiring him to pay such cost not exceeding one thousand taka as it may deem appropriate and determine:

Provided that the dismissal under rule 8 shall not be set aside under this rule, unless an application, supported by affidavit, praying for setting aside the order of dismissal is made to the Court within thirty days of the date on which the order of dismissal is made:

Provided further that no dismissal shall be set aside more than once under this rule.

(2) As soon as an order under sub-rule (1) is made setting aside *ex parte* dismissal, the Court shall cause notice thereof to be served at the cost of the plaintiff upon the defendant who appeared in the suit.]

Procedure in case of non-attendance of one or more of several plaintiffs

10. Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

Procedure in case of non-attendance of one or more of several defendants

11. Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person

12. Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

Setting aside Decrees Ex Parte

Setting aside decree *ex parte* against defendant

13.(1) In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs,

payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also[1][:

Provided further that no decree shall be set aside more than once under this rule at the instance of the same defendant.]

(2) Provisions of section 5 of the Limitation Act, 1908 shall apply to the applications under rule 13 (1) of this order.

Directly setting aside *ex parte* decree

[2][**13A.** (1) Notwithstanding anything contained in rule 13 or any other law, the Court may, in order to avoid delay and expedite disposal, directly set aside the decree without requiring the defendant to adduce evidence to satisfy it about sufficient causes as required under rule 13, but requiring him to pay such cost not exceeding three thousand taka as it may deem appropriate and determine:

Provided that the decree under this rule shall not be set aside unless an application, supported by affidavit, praying for setting aside the decree is made to the Court within thirty days of the date on which the decree is passed by the defendant who appeared and filed written statement:

Provided further that no decree shall be set aside more than once under this rule at the instance of the same defendant.

(2) As soon as an order under sub-rule (1) is made setting aside an *ex parte* decree, the Court shall cause notice thereof to be served at the cost of the defendant upon the plaintiff.]

No decree to be set aside without notice to opposite party

14. No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

Restoration of a suit where the dismissal is set-aside

[3][**15.** Where the dismissal of a suit is set aside under rule 4 or rule 9 or a decree is set aside under rule 13, the suit shall on restoration, proceed from the stage where it was immediately before the making of the order of dismissal or passing of the decree.]

---

1 The colon ":" was substituted for the full stop "." and thereafter proviso was inserted by section 11 of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

2 Rule 13A was inserted by section 3 of the Code of Civil Procedure (Amendment) Act, 2006 (Act No. VIII of 2006).

3 Rule 15 was added by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

ORDER X

EXAMINATION OF PARTIES BY THE COURT

Ascertainment whether allegations in pleadings are admitted or denied

1. At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Oral examination of party or companion of party

2. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

Substance of examination to be written

3. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Consequence of refusal or inability of pleader to answer

4. (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER XI

DISCOVERY AND INSPECTION

Discovery by interrogatories

1. In any suit the plaintiff or defendant by leave of the Court may [1][, within ten days from the date of framing of issues,] deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Particular interrogatories to be submitted

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered [2][shall be submitted to the Court and that Court shall decide within fourteen days from the date of filing of the said application]. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

Costs of interrogatories

3. In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

---

1 The commas and words ", within ten days from the date of framing of issues," were inserted by of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

2 The words “shall be submitted to the Court and that Court shall decide within fourteen days from the date of filing of the said application” were substituted for the words “shall be submitted to the Court” by section 9 of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

Form of interrogatories

4. Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

Corporations

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

Objections to interrogatories by answer

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

Setting aside and striking out interrogatories

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

Affidavit in answer, filing

8. Interrogatories shall be answered by affidavit to be filed within ten days [1][* * *].

Form of affidavit in answer

9. An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

No exception to be taken

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

Order to answer or answer further

11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *viva voce* examination, as the Court may direct.

---

[1] The comma and words ", or within such other time as the Court may allow" were omitted by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

Application for discovery of documents

12. Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or had been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfies that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Affidavit of documents

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

Production of documents

14. It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Inspection of documents referred to in pleadings or affidavits

15. Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

Notice to produce

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

Time for inspection when notice given

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

Order for inspection

18. (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Verified copies

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents, when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Verified copies

19. (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

Premature discovery

20. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

21. Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

Non-compliance with order for discovery

22. Any party may, at the trial of a suit, use in evidence any one or more of the answers or any party of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

Using answers to interrogatories at trial

23. This order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

Order to apply to minors

ORDER XII

ADMISSIONS

1. Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice of admission of case

2. Either party may call upon the other party [1][to admit, within fifteen days from the date of service of notice, any document], saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

Notice to admit documents

---

[1] The words and commas, "to admit, within fifteen days from the date of service of notice, any document" were substituted for the words "to admit any document" by section 10 of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

Form of notice

3. A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

Notice to admit facts

4. Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

Form of admission

5. A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

Judgment on admissions

6. Any party may, at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may upon such application make such order, or give such judgment, as the Court may think just.

Affidavit of signature

7. An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

8. Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Notice to produce documents

9. If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

Costs

ORDER XIII

PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

1 and **2.** [*Omitted by the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983), section 5.*]

3. The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Rejection of irrelevant or in-admissible documents

4. (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:–

Endorsements on documents admitted in evidence

(a) the number and title of the suit,
(b) the name of the person producing the document,
(c) the date on which it was produced, and
(d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

Endorsements on copies of admitted entries in books, accounts and records

5. (1) Save in so far as is otherwise provided by the Banker's Books Evidence Act, 1891, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished-

(a) where the record, book or account is produced on behalf of a party, then by that party, or

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Endorsements on documents rejected as inadmissible in evidence

6. Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

Recording of admitted and return of rejected documents

7. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

Court may order any document to be impounded

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Return of admitted documents

9. (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,-

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

Court may send for papers from its own records or from other Courts

10. (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Provisions as to documents applied to material objects

11. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

ORDER XIV

SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON

Framing of issues

1. (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds: (a) issues of fact, (b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend [1][:

Provided that in any case the issues shall be framed and recorded, subject to the provisions of rules 4 and 5, within fifteen days from the date of first hearing of the suit or the date of filing of the written statement, whichever is later.]

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

---

[1] A colon ":" was substituted, for the full-stop "." and thereafter the proviso was added by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

Issues of law and of fact

2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Materials from which issues may be framed

3. The Court may frame the issues from all or any of the following materials:–

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

Court may examine witness or documents before framing issues

4. Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it [1][may adjourn the framing of the issues to a day not later than fifteen days], and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Power to amend, and strike out, issues

5. (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

Questions of fact or law may by agreement be stated in form of issues

6. Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue,–

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties

---

[1] The words “may adjourn the framing of the issues to a day not later than fifteen days” were substituted for the words “may adjourn the framing of the issues to a future day” by section 11 of The Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment

7. Where the Court is satisfied, after making such inquiry as it deems proper,–

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

Fixing date for final hearing

[1][**8.** After the issues are framed, the Court shall, within one hundred and twenty days thereof, fix a date for final hearing of the suit.]

ORDER XV

DISPOSAL OF THE SUIT AT THE FIRST HEARING

Parties not at issue

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

One of several defendants not at issue

2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

---

[1] Rule 8 was added by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

Parties at issue

3. (1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

Failure to produce evidence

4. Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

ORDER XVI

SUMMONING AND ATTENDANCE OF WITNESSES

Summons to attend to give evidence or produce documents

1. At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

Expenses of witness to be paid into Court on applying for summons

2. (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Experts

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Scale of expenses

(3) Whether the Court is subordinate to the High Court Division, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

Tender of expenses to witness

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Procedure where insufficient sum paid in

4. (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned, without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses of witnesses detained more than one day

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Time, place and purpose of attendance to be specified in summons

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

Summons to produce document

6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Power to require persons present in Court to give evidence or produce document

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

Summons how served

8. Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

Time for serving summons

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Procedure where witness fails to comply with summons

10. (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

If witness appears, attachment may be withdrawn

11. Where, at any time after the attachment of his property, such person appears and satisfies the Court,-

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service; and

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Procedure if witness fails to appear

12. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred Taka as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

Mode of attachment

13. The provisions with regard to the attachment and sale property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

Court may of its own accord

14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being

in force, whether the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

summon as witnesses strangers to suit

15. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

Duty of persons summoned to give evidence or produce document

16. (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

When they may depart

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

17. The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

Application of rules 10 to 13

18. Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

Procedure where witness apprehended cannot give evidence or produce document

19. No one shall be ordered to attend in person to give evidence unless he resides–

(a) within the local limits of the Court's ordinary original jurisdiction, or

No witness to be ordered to attend in person unless resident within certain limits

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

Consequence of refusal of party to give evidence when called on by Court

20. Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Rules as to witnesses to apply to parties summoned

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

ORDER XVII

ADJOURNMENTS

Court may grant time and adjourn hearing

1. (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

Costs of adjournment

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

[1][(3) Notwithstanding anything contained in sub-rules (1) and (2), the Court shall not grant more than [2][four] adjournments in a suit before peremptory hearing at the instance of either party to the suit, and any adjournment granted to a party beyond the aforesaid limit shall make such party liable to pay a cost of not less than two hundred taka and

---

1 Sub-rules (3), (4), (5), (6) and (7) were added by section 7 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).

2 The word "four" was substituted for the word "six" by section 12 of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

not more than one thousand taka to the other party, within time to be specified by it; noncompliance with which, by the plaintiff shall render the suit liable to be dismissed and, by the defendant shall render the suit liable to be disposed of *ex parte:*

Provided that the Court shall not grant more than three adjournments to a party even with cost under this rule.

(4) Notwithstanding anything contained in the Code, the Court shall not grant any adjournment at the peremptory hearing stage and thereafter in a suit at the instance of either party to the suit:

Provided that if for ends of justice any adjournment is granted to a party under this sub-rule, the Court shall direct that party to pay a cost of not less than two hundred taka and not more than one thousand taka to the other party, within time to be specified by it, noncompliance with which, by the plaintiff shall render the suit liable to be dismissed and, by the defendant shall render the suit liable to be disposed of *ex parte*:

Provided further that the Court shall not grant more than three adjournments to a party even with cost under the above proviso.

(5) Where applications are made by both the parties for any adjournment under sub-rule (3) or (4) and the applications are allowed with costs, the Court shall direct each party to pay such cost as revenue to the state.

(6) The Court shall not, of its own, order any adjournment under this rule without recording reasons therefor.

(7) A suit dismissed or disposed of *ex parte* under sub-rule (3) or (4) shall not be revived for hearing unless the party, for whose noncompliance the suit was dismissed or disposed of *ex parte*, makes within thirty days of such dismissal or *ex parte* disposal, an application together with cost of two thousand taka into Court for such revival; and upon such application being made, the suit shall be revived for hearing without any further proceeding; and cost deposited into Court shall be paid to the other party.]

Procedure if Parties fail to

2. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may

appear on day fixed

proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

Court may proceed notwithstanding either party fails to produce evidence, etc.

3. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

ORDER XVIII

HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

Right to begin

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Statement and production of evidence

2. (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his cause and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

Evidence where several issues

3. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Witnesses to be examined in open Court

4. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge.

Examination-in-chief on affidavit and admissibility of documents

[1][**4A.** Notwithstanding anything contained in this Code or the Evidence Act, 1872 (Act No. 1 of 1872), the facts stated in the plaint or written statement shall not be required to be orally stated or denied by the plaintiff or the defendant, as the case may be, and in every

---

[1] Rule 4A was inserted by section 13(a) of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

case, the examination-in-chief of the plaintiff or the defendant, as the case may be, shall be on affidavit and he may then be cross-examined and, if necessary, re-examined:

Provided that a copy of such affidavit shall be supplied to the other party before being furnished to the Court:

Provided further that where documents are filed along with the affidavit and the parties rely upon such documents, the proof and admissibility of those documents shall be subject to the orders of the Court.]

How evidence shall be taken in appealable cases

5. In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it.

When deposition to be interpreted

6. Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

Evidence under section 138

7. Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

Memorandum when evidence not taken down by Judge

8. Where the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

When evidence may be taken in English

9. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down.

Any particular question and answer may be taken down

10. The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

Questions objected to and allowed by Court

11. Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

Remarks on demeanour of witnesses

12. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Memorandum of evidence in unappealable cases

13. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he disposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

Judge unable to make such memorandum to record reasons of his inability

14. (1) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

(2) Every memorandum so made shall form part of the record.

Power to deal with evidence taken before another Judge

15. (1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

Power to examine witness immediately

16. (1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

Court may recall

17. The Court may at any stage of a suit recall any witness who

has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit. and examine witness

18. The Court may at any stage of a suit inspect any property or thing concerning which any question may arise. Power of Court to inspect

[1][**19.** (1) The Court shall complete the hearing of a suit within one hundred and twenty days from the date fixed for its final hearing. Time for completion of hearing

(2) In this rule, in determining the time, only the working days shall be counted.]

[2][**20.**Court shall not fix, more than [3][ten] suits, including [4][four] part-heard suits, in the daily cause list for peremptory hearing, and more than [5][two hundred] suits in the peremptory stage; and when upon disposal, the total number of suits in the peremptory stage comes down to less than [6][one hundred forty], the Court shall then bring in more suits in the peremptory stage, generally in the order of dates of institution of suits: Fixation of suits in the daily cause list, etc

Provided that if in any Court, the number of suits made ready for hearing is not sufficient for fixation in the manner as aforesaid, it shall be in the discretion of the Court to make the fixation in a reasonable manner.

Explanation.–In this rule the word "peremptory" shall have the meaning with reference to the word used in Civil Rules and Orders.]

---

1 Rule 19 was added by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

2 Rule 20 was added by section 8 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).

3 The word “ten” was substituted for the word “five” by section 13(b) of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

4 The word “four” was substituted for the word “two” by section 13(b) of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

5 The words “two hundred” were substituted for the words “one hundred” by section 13(b) of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

6 The words “one hundred forty” were substituted for the word “seventy” by section 13(b) of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

ORDER XIX

AFFIDAVITS

Power to order any point to be proved by affidavit

1. Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, and order shall not be made authorizing the evidence of such witness to be given by affidavit.

Power to order attendance of deponent for cross-examination

2. (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

Matters to which affidavits shall be confined

3. (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

ORDER XX

JUDGMENT AND DECREE

Judgment when pronounced

1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, [1][not beyond seven days,] of which due notice shall be given to the parties or their pleaders.

---

[1] The words and comma "not beyond seven days," were inserted by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

Power to pronounce Judgment written by Judge's predecessor

2. A Judge may pronounce a judgment written but not pronounced by his predecessor.

Judgment to be signed

3. The Judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review.

Judgments of Small Cause Courts

4. (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

Judgments of other Courts

(2) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

Court to state its decision on each issue

5. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue [1][* * *].

Time for drawn up a decree

[2][**5A**. The decree shall be drawn up within seven days from the date of pronouncement of the judgment.]

Contents of decree

6. (1) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set-off against any sum which is admitted or found to be due from the former to the latter.

---

[1] The comma and words ", unless the finding upon any one or more of the issues is sufficient for the decision of the suit" were omitted by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

[2] Rule 5A was inserted by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

Date of decree

7. The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Procedure where Judge has vacated office before signing decree

8. Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

Decree for recovery of immoveable property

9. Where the subject-matter of the suit is immoveable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Decree for delivery of moveable property

10. Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Decree may direct payment by instalments

11. (1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

Order, after decree, for payment by instalments

(2) After the passing of any such decree the Court may, on the application of the Judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

Decree for possession and mesne profits

12. (1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the Court may pass a decree-

(a) for the possession of the property;

(b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until–

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

Decree in administration suit

13. (1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree, ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration suit is pending with respect to the estates of persons adjudged or declared insolvent; and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

Decree in pre-emption-suit

14. (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall–

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,–

(a) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and

(b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

Decree in suit for dissolution of partnership

15. Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

Decree in suit for account between principal and agent

16. In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

Special directions as to accounts

17. The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

Decree in suit for partition of property or separate possession of a share therein

18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,–

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any [1][Gazetted officer subordinate to] the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immoveable property or to moveable property, the Court may, if partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

---

[1] The words "Gazetted officer subordinate to" were substituted, for the words "Gazetted subordinate of" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Decree when set-off is allowed

19. (1) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Appeal from decree relating to set-off

(2) Any decree passed in suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

Certified copies of judgment and decree to be furnished

20. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

ORDER XXI

EXECUTION OF DECREES AND ORDERS

Payment under Decree

Modes of paying money under decree

1. (1) All money payable under a decree shall be paid as follows, namely:–

(a) into the Court whose duty it is to execute the decree; or

(b) out of Court to the decree-holder; or

(c) otherwise as the Court which made the decree directs.

(2) where any payment is made under clause (a) of sub-rule (1), notice of such payment shall be given to the decree-holder.

Payment out of Court to decree-holder

2. (1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

Courts Executing Decrees

Lands situate in more than one jurisdiction

3. Where immoveable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

4. [*Omitted by the Adaptation of Central Acts and Ordinances Order, 1949.*]

Mode of transfer

5. Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Procedure where Court desires that its own decree shall be executed by another Court

6. The Court sending a decree for execution shall send–

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

Court receiving copies of decree, etc., to file same without proof

7. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Execution of decree or order by court to which it is sent

8. Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

Execution by High Court Division of decree transferred by other Court

9. Where the Court to which the decree is sent for execution is the High Court Division, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

Application for Execution

Application for execution

10. Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

Oral application

11. (1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

Written application

(2) Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:–

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(j) the mode in which the assistance of the Court is required, whether–

(i) by the delivery of any property specifically decreed;

(ii) by the attachment and sale, or by the sale without attachment, of any property;

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

Application for attachment of moveable property not in judgment-debtor's possession

12. Where an application is made for the attachment of any moveable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of immoveable property to contain certain particulars

13. Where an application is made for the attachment of any immoveable property belonging to a judgment-debtor, it shall contain at the foot–

(a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and

(b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Power to require certified extract from Collector's register in certain cases

14. Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land and the shares of the registered proprietors.

Application for execution by joint decree-holder

15. (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Application for execution by transferee of decree

16. Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the

same conditions as if the application were made by such decree-holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Procedure on receiving application for execution of decree

17. (1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

(2) where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

Execution in case of cross decrees

18. (1) Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then–

(a) if the two sums are equal, satisfaction shall be

entered upon both decrees; and

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction of the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless–

(a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

Illustrations

(a) A holds a decree against B for Taka 1,000. B holds a decree against A for the payment of Taka 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this rule.

(b) A and B, co-plaintiffs, obtain a decree for Taka 1,000 against C, and C obtains a decree for Taka 1,000 against B. C cannot treat his decree as a cross-decree under this rule.

(c) A obtains a decree against B for Taka 1,000. C who is a trustee for B, obtains a decree on behalf of B against A for Taka 1,000. B cannot treat C's decree as a cross-decree under this rule.

(d) A, B, C, D and E are jointly and severally liable for Taka 1,000 under a decree obtained by F. A obtains a decree for Taka 100 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this rule.

Execution in case of cross-claims under same decree

19. Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then–

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and,

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

Cross-decrees and cross-claims in mortgage-suits

20. The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

Simultaneous execution

21. The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

Notice to show cause against execution in certain cases

22. (1) Where an application for execution is made–

(a) more than [1][two years] after the date of the decree, or

(b) against the legal representative of a party to the decree,

or where an application is made for execution of a decree filed under the provisions of section 44A, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than [1][two years] having elapsed between the date of the decree and the application for execution if the application is made within [1][two years] from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

---

[1] The words "two years" were substituted, for the words "one year" by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

[1][(3) No order of execution of the decree shall be invalid by reason of the omission to issue a notice under sub-rule (1) or to record reasons in a case where notice is dispensed with under sub-rule (2) unless the judgment-debtor has sustained substantial injury by reason of such omission.]

Procedure after issue of notice

23. (1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

Process for Execution

Process for execution

24. (1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process a day shall be specified on or before which it shall be executed.

Endorsement on process

25. (1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.

---

[1] Sub-rule (3) was added by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

Stay of Execution

When Court may stay execution

26. (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

Power to require security from, or impose conditions upon, judgment-debtor

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Liability of judgment-debtor discharged

27. No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

Order of Court which passed decree or of appellate Court to be binding upon Court applied to

28. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Stay of execution pending suit between decree-holder and judgment-debtor

29. Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

Mode of Execution

Decree for payment of money

30. Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

Special provisions for execution of decree for payment of money

[1][**30A.** (1) Notwithstanding anything contained in this Code, the Court may, on the application of the decree-holder, detain the judgment-debtor in the civil prison for the whole or any part of the decretal amount remaining unpaid, for a term not exceeding six months or until payment is made, whichever is earlier.

(2) The expense incurred for subsistence of the judgment-debtor detained in a civil prison under this Code shall be borne by the Government.

(3) The provision of detention in the civil prison shall not apply to a judgment-debtor who is a minor of unsound mind or who has been declared as insolvent by a competent Court or who has been substituted as successor to the original judgment-debtor by inheritance.

(4) If the judgment-debtor in the civil prison deposits not less than 25% of the decretal amount together with a bond for payment of the remaining amount within 60 days, the Court shall release him and if the judgment-debtor fails to pay the remaining decretal amount as per the conditions stated in the bond, he shall be liable to be re-arrested and detained further in the civil prison which may extend to six months.

(5) If a judgment-debtor is detained for the entire term in

---

[1] Rule 30A was inserted by section 14(a) of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

the civil prison under sub-rule (1) or (4), he shall not be re-arrested or detained further in the civil prison in the same execution proceeding or in any other execution proceeding arising from the same decree.

(6) If a judgment-debtor is detained in the civil prison under this rule for the whole or any part of the term of civil detention, he shall not be exempted from paying the unpaid amount of the decree.]

Decree for specific moveable property

31. (1) Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

Decree for specific performance, for restitution of conjugal rights, or for an injunction

32. (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree to the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific

performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

Illustration

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution-proceedings.

Discretion of Court in executing decrees for restitution of conjugal rights

33. (1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree against a husband for the restitution of conjugal rights or at any time afterwards, may order that the decree shall be executed in the manner provided in this rule.

(2) Where the Court has made an order under sub-rule (1), it

may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

Decree for execution of document, or endorsement of negotiable instrument

34. (1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the documents so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:–

"C. D., Judge of the Court of

(or as the case may be), for A. B., in a suit by E. F. against A. B.", and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

Decree for immoveable property

35. (1) Where a decree is for the delivery of any immoveable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immoveable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

Decree for delivery of immoveable property when in occupancy of tenant

36. Where a decree is for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

Arrest and Detention in the Civil Prison

Discretionary power to permit judgment-debtor to show cause against detention in prison

37. (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

Warrant for arrest to direct judgment-debtor to be brought up

38. Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the cost (if any) to which he is liable, be sooner paid.

[1][***]

---

[1] Rule 39 was omitted by section 14(b) of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

Proceedings on appearance of judgment-debtor in obedience to notice or after arrest

40. (1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

Attachment of Property

Examination of judgment-debtor as to his property

41. Where a decree is for the payment of money the decree-holder may apply to the Court for an order that-

(a) the judgment-debtor, or

(b) in the case of a corporation, any officer thereof, or

(c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined

42. Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Attachment of moveable property other than agricultural produce, in possession of judgment-debtor

43. Where the property to be attached is moveable property, other than agricultural produce, in the possession of judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Attachment of agricultural produce

44. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,–

(a) where such produce is a growing crop, on the land on which such crop has grown, or

(b) where such produce has been cut or gathered, on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

Provisions as to agricultural produce under attachment

45. (1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been served from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Attachment of debt, share and other property not in possession of judgment-debtor

46. (1) In the case of–

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation,

(c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting,–

(i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

Attachment of share in moveables

47. Where the property to be attached consists of the share or interest of the judgment-debtor in moveable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

Attachment of salary or allowances of public officer or servant of railway company or local authority

48. (1) Where the property to be attached is the salary or allowances of a servant of the [1][Republic] or of a servant of [2][the Railway] or local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as the Government may by notification in the official Gazette appoint in this behalf,–

(a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be;

(b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time to be disbursed by the aggregate of the amounts from time to time remitted to the Court.

(2) Where the attachment proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

---

1 The word "Republic" was substituted, for the word "State" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

2 The words "the railway" were substituted, for the letter and words "a railway company" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the Government or [1][the railway] or local authority, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits if he is in receipt of any salary or allowances payable out of the revenues of the Government or the funds of [1][the railway] or local authority in Bangladesh; and the Government or the [2][the railway] or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

[3][* * *]

Attachment of partnership property

49. (1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and directs accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

---

1 The words "the railway" were substituted, for the words "the railway company" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

2 The words "the railway" were substituted, for the letter and words "a railway company carrying on business in any part of Pakistan" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

3 Explanation to sub-rule (3) of rule 48 was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within Bangladesh.

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within Bangladesh.

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all partners, and all orders made on such applications shall be similarly served.

Execution of decree against firm

50. (1)Where a decree has been passed against a firm, execution may be granted-

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in these sub-rules shall be deemed to limit or otherwise affect the provisions of section 247 of the Contract Act, 1872.

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

Attachment of negotiable instruments

51. Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

Attachment of property in custody of Court or public officer

52. Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

Attachment of decrees

53. (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,–

(a) if the decrees were passed by the same Court, then by order of such Court, and

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until–

(i) the Court which passed the decree sought to be executed cancels the notice, or

(ii) the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

Attachment of immoveable property

54. (1) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

Removal of attachment after satisfaction of decree

55. Where–

(a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or

(b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or

(c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immoveable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

Order for payment of coin or currency notes to party entitled under decree

56. Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Determination of attachment

57. Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

Investigation of Claims and Objections

Investigation of claims to, and objections to attachment of, attached property

58. (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court, shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

Postponement of sale

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Evidence to be adduced by claimant

59. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Release of property from attachment

60. Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

Disallowance of claim to property attached

61. Where the Court is satisfied that the property was, at the time it was attached, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Continuance of attachment subject to claim of incumbrancer

62. Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

63. [*Omitted by the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983), section 5.*]

Sale Generally

Power to order property attached to be sold and proceeds to be paid to person entitled

64. Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Sales by whom conducted and how made

65. Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

Proclamation of sales by public auction

66. (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible-

(a) the property to be sold;

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(c) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any

person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

Mode of making proclamation

67. (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

Time of sale

68. Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

Adjournment or stoppage of sale

69. (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than [1][thirty] days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into Court which ordered the sale.

---

[1] The word "thirty" was substituted, for the word "seven" by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

Saving of certain sales

70. Nothing in rules 66 to 69 shall be deemed to apply to any case in which the execution of a decree has been transferred to the Collector.

Defaulting purchaser answerable for loss on re-sale

71. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court or to the Collector or subordinate of the Collector, as the case may be, by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the executing of a decree for the payment of money.

Decree-holder not to bid for or buy property without permission

72. (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

Where decree-holder purchases, amount of decree may be taken as payment

(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

Restriction on bidding or purchase by officers

73. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Sale of Moveable Property

Sale of agricultural produce

74. (1) Where the property to be sold is agricultural produce, the sale shall be held,–

(a) if such produce is a growing crop, on or near the land on which such crop has grown, or,

(b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out gain or the like or fodder-stack on or in which it is deposited:

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to gather advantage.

(2) Where, on the produce being put up for sale,–

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

Special provisions relating to growing crops

75. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

Negotiable instruments and shares in corporations

76. Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Sale by public auction

77. (1) Where moveable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the moveable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall deemed to be the bidding of the co-owner.

Irregularity not to vitiate sale, but any person injured may sue

78. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Delivery of moveable property, debts and shares

79. (1) Where the property sold is moveable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is moveable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Transfer of negotiable instruments and shares

80. (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:–

A. B. by C. D., Judge of the Court of (or as the case may be), in a suit by E. F. against A. B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint such person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Vesting order in case of other property

81. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Sale of Immoveable Property

What Courts may order sales

82. Sales of immoveable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

Postponement of sale to enable judgment-debtor to raise amount of decree

83. (1) Where an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale:

Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set-off such money under the provisions of rule 72, into Court:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of or charge on, such property.

Deposit by purchaser and re-sale on default

84. (1) On every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

Time for payment in full of purchase-money

85. The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

Procedure in default of payment

86. In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Notification on re-sale

87. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

Bid of co-sharer to have preference

88. Where the property sold is a share of undivided immoveable property and two or more persons, of whom one is a co-sharer, respectively bid the same for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Application to set aside sale on deposit

89. (1) Where immoveable property has been sold in execution of a decree, any person, either owing such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,–

(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

Application to set aside sale on ground of irregularity or fraud

90. (1) Where any immoveable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest

91. The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had on saleable interest in the property sold.

Sale when to become absolute or be set aside

92. (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

Return of purchase-money in certain cases

93. Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

Certificate to purchaser

94. Where a sale of immoveable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

Delivery of property in occupancy of judgment-debtor

95. Where the immoveable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of property in occupancy of tenant

96. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Resistance to Delivery of Possession to Decree-holder or Purchaser

Resistance or obstruction to possession of immoveable property

97. (1) Where the holder of a decree for the possession of immoveable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Resistance or obstruction by Judgment-debtor

98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days.

Resistance or obstruction by *bona fide* claimant

99. Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application.

Dispossession by decree-holder or purchaser

100. (1) Where any person other than the judgment-debtor is disposed of immoveable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Bona fide claimant to be restored to possession

101. Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

Rules not applicable to transferee *lite bendente*

102. Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Orders conclusive subject to regular suit

103. Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 or rule 101 may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be conclusive.

Direct execution of decree

[1][**104.** (1) Notwithstanding anything contained in this Code or any other law for the time being in force, the Court may, subject to the law of limitation, receive an application for the execution of a decree in the record of the suit in which the decree has been passed, or, where the record has been called for by an Appellate or Revisional Court, in a part-file prepared for this purpose and the Court may forthwith order the execution of the decree.

(2) Where the decree-holder or the purchaser of the property sold in execution of a decree is resisted or obstructed by the judgment-debtor or any person claiming under him or any other person, as the case may be, in obtaining possession of the property and the Court is satisfied in that regard, it may, on the application of the decree-holder or the purchaser, direct any person as the Court may appoint in this behalf and, if necessary, the law enforcement agency to place the decree-holder or the purchaser in possession of the property.]

ORDER XXII

DEATH, MARRIAGE AND INSOLVENCY OF PARTIES

No abatement by party's death, if right to sue survives

1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

---

[1] Rule 104 was added by section 14(c) of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

Procedure where one of several plaintiffs or defendants dies and right to sue survives

2. Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue services to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Procedure in case of death of one of several plaintiffs or of sole plaintiff

3. (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

Procedure in case of death of one of several defendants or of sole defendant

4. (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

[1][(4) Notwithstanding anything contained in sub-rule (3), the plaintiff shall not be required to substitute and shall be exempt from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who having filed it, has failed to appear and contest the suit at the hearing; and judgment may in such a case be pronounced against the deceased defendant notwithstanding the death of such defendant and shall have the same force and effect as if it had been pronounced before the death took place.]

Determination of question as to legal representative

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

No abatement by reason of death after hearing

6. Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

---

[1] Sub-rule (4) was added by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

Suit not abated by marriage of female party

7. (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in the case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

When plaintiff's insolvency bars suit

8. (1)The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

Procedure where assignee fails to continue suit or give security

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

Effect of abatement or dismissal

9. (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of [1][sections 4 and 5] of the [1][Limitation Act, 1908] shall apply to application under sub-rule (2).

---

[1] The word and figures "section 4 and 5" and the words, comma and figure "Limitation Act, 1908" were substituted, for the word and figure "section 5" and words, comma and figure "Indian Limitation Act, 1877" respectively by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

[1][**9A.** Notwithstanding anything contained in rule 9 or any other law, where the legal representative of a deceased plaintiff or the assignee or the receiver of any insolvent plaintiff files an application for setting aside abatement or dismissal made under this Order, within sixty days of abatement or dismissal, the Court may, in order to avoid delay and expedite disposal, set aside the abatement or dismissal without requiring the applicant to adduce evidence to prove sufficient cause as required under rule 9, but requiring him to pay such cost not exceeding three thousand taka as the Court may deem appropriate.]

Directly setting aside abatement or dismissal

10. (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or developed.

Procedure in case of assignment before final order in suit

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit to sub-rule (1).

11. In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

Application of Order to appeals

12. Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

Application of Order to proceedings

ORDER XXIII

WITHDRAWAL AND ADJUSTMENT OF SUITS

1. (1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

Withdrawal of suit or abandonment of part of claim

(2) Where the Court is satisfied–

(a) that a suit must fail by reason of some formal defect, or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

---

[1] Rule 9A was inserted by section 4 of the Code of Civil Procedure (Amendment) Act, 2006 (Act No. VIII of 2006).

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to withdraw without the consent of the others.

Limitation law not affected by first suit

2. In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Compromise of suit

3. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

Proceedings in execution of decrees not affected

4. Nothing in this Order shall apply to any proceedings in execution of a decree or order.

ORDER XXIV

PAYMENT INTO COURT

Deposit by defendant of amount in satisfaction of claim

1. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

Notice of deposit

2. Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

Interest on deposit not allowed to plaintiff after notice

3. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

4. (1) Where the plaintiff accepts such amounts as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim. Procedure where plaintiff accepts deposit as satisfaction in part

(2) Where the plaintiff accepts such amounts as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation. Procedure where he accepts it as satisfaction in full

Illustrations

(a) A owes B Taka 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Taka 100, and is willing to pay him that sum without suit. B claims Taka 150 and sues A for that amount. On the plaint being filed A pays Taka 100 into Court and disputes only his liability to pay the remaining Taka 50. B accepts the taka 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

ORDER XXV

SECURITY FOR COSTS

1. (1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are residing out of Bangladesh, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within Bangladesh other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant. When security for costs may be required from plaintiff

Residence out of Bangladesh

(2) Whoever leaves Bangladesh under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of Bangladesh within the meaning of sub-rule (1).

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within Bangladesh.

Effect of failure to furnish security

2. (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

ORDER XXVI

COMMISSIONS

Commissions to Examine Witnesses

Cases in which Court may issue commission to examine witness

1. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

Order for commission

2. An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

Where witness resides within Court's jurisdiction

3. A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

Persons for whose examination commission may issue

4. (1) Any Court may in any suit issue a commission for the examination of–

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) any person in the service of the [1][Republic] who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being the High Court Division, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

Commission or Request to examine witness not within Bangladesh

5. Where any Court to which application is made for the issue of commission for the examination of a person residing at any place not within Bangladesh is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

Court to examine witness pursuant to commission

6. Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

Return of commission with depositions of witnesses

7. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the

---

[1] The word "Republic" was substituted, for the word "State" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

When depositions may be read in evidence

8. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless–

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a person in the service of the [1][Republic] who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorises the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Commissions for Local Investigations

Commissions to make local investigations

9. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount or any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court [2][within such time not exceeding three months as may be fixed by the Court]:

---

1 The words "Republic" was substituted, for the word "State" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

2 The words "within such time not exceeding three months as may be fixed by the Court" were added by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

[1][Provided that the Court may, on the prayer of the Commissioner and on sufficient cause being shown, extend the time.]

Procedure of Commissioner

10. (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court.

Report and depositions to be evidence in suit. Commissioner may be examined in person

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it think fit.

Commissions to examine Accounts

Commission to examine or adjust accounts

11. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Court to give Commissioner necessary instructions. Proceedings and report to be evidence.

12. (1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

Court may direct further inquiry

(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

---

[1] The proviso was substituted, for the former proviso by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

Commissions to make Partitions

Commission to make partition of immoveable property

13. Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

Procedure of Commissioner

14. (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court [1][within such time not exceeding three months as may be fixed by the Court]; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same [2][:

Provided that the Court may, on the prayer of the Commissioner and on sufficient cause being shown, extend the time.]

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

---

1 The words "within such time not exceeding three months as may be fixed by the Court" were inserted by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

2 A colon was substituted, for full stop and thereafter the proviso was added by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

General Provisions

Expenses of Commission to be paid into Court

15. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Powers of Commissioners

16. Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,-

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other thinks relevant to the subject of inquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

Attendance and examination of witnesses before Commissioner

17. (1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of Bangladesh, and for the purposes of this rule the commissioner shall be deemed to be a Civil Court.

(2) A Commissioner may apply to any Court (not being the High Court Division) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

Parties to appear before Commissioner

18. (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

[1][*Commissions issued at the Instance of Foreign Tribunals*

Cases in which High Court Division may issue commission to examine witness

19. (1) If the High Court Division is satisfied–

(a) that a foreign Court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,

(b) that the proceeding is of a civil nature, and

(c) that the witness is residing within the limits of the [2][High Court Divisions,] appellate jurisdiction,

it may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1)–

(a) by a certificate signed by the consular officer of the foreign country of the highest rank in Bangladesh and transmitted to the High Court Division through the Government, or

(b) by a letter of request issued by the foreign Court and transmitted to the High Court Division through the Government, or

(c) by a letter of request issued by the foreign Court and produced before the High Court Division by a party to the proceeding.

Application for commission

20. The High Court Division may issue a commission under rule 19–

(a) upon application by a party to the proceeding before the foreign Court, or

(b) upon an application by a law officer of the Government acting under instructions from the Government.

---

1 The sub-heading "*Commissions issued at the Instance of Foreign Tribunals*" and rules 19, 20, 21 and 22 were inserted by section 3 of the Code of Civil Procedure (Amendment) Act, 1932 (Act No. X of 1932).

2 The words and comma "High Court Divisions," were substituted, for the words "High Courts" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

21. A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or, where the witness resides within the local limits of the ordinary original civil jurisdiction of the High Court Division, to any person whom the Court thinks fit to execute the commission.

To whom commission may be issued

22. The provisions of rules 6, 15, 16, 17 and 18 of this Order is so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed it shall be returned, together with the evidence taken under it, to the High Court Division, which shall forward it to the Government, along with the letter of request for transmission to the foreign Court.]

Issue, execution and return of commissions, and transmission of evidence to foreign Court

[1][*Exclusion of time taken by Commissioner*

23. Where a commission is issued for any purpose at any stage of a suit, the time taken by the Commissioner for returning the Commission after execution or for submitting the report, as the case may be, shall be excluded from the time fixed for doing anything or performing any act at that stage.]

Exclusion of time taken by Commissioner

ORDER XXVII

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

1. In any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

Suits by or against Government

2. Persons being *ex-officio* or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

Persons authorized to act for Government

---

[1] Sub-heading "*Exclusion of time taken by commissioner*" and rule 23 were added by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

Plaints in suits by or against Government

3. In suits by or against the Government, instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the appropriate name as provided in section 79.

Agent for Government to receive process

4. The Government pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court.

Fixing of day for appearance on behalf of Government

5. The Court, in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the Government, and may extend the time at its discretion.

Attendance of person able to answer questions relating to suit against Government

6. The Court may also, in any case in which the Government pleader is not accompanied by any person on the part of the Government, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Extension of time to enable public officer to make reference to Government

7. (1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application the Court shall extend the time for so long as appears it to be necessary.

Procedure in suits against public officer

8. (1) Where the Government undertakes the defence of a suit against a public officer the Government pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under sub-rule (1) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

[1][**8A.** No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Government or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

No security to be required from Government or a public officer in certain cases

8B. [*Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.*]]

[2][ORDER XXVIIA

SUITS INVOLVING ANY SUBSTANTIAL QUESTION AS TO THE INTERPRETATION OF CONSTITUTIONAL LAW

1. In any suit in which it appears to the Court that any substantial question as to the interpretation of constitutional law is involved, the Court shall not proceed to determine that question until after notice has been given to the Attorney General for Bangladesh if the question of law concerns the Government [3][* * *].

Notice to the Attorney General

2. The Court may at any stage of the proceedings order that the Government shall be added as a defendant in any suit involving any substantial question as to the interpretation of constitutional law if the Attorney General for Bangladesh [4][***] whether upon receipt of notice under rule 1, or otherwise, applies for such addition is necessary or desirable for the satisfactory determination of the question of law involved.

Court may add Government as party

---

1 Rules 8A and 8B were inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 Order XXVIIA was inserted by the Code of Civil Procedure (Amendment) Act, 1942 (Act No. XXIII of 1942).

3 The words "and to the Advocate-General of the Province if the question of Law concerns a Provincial Government" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

4 The words "or the Advocate-General of the Province as the case may be" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Costs when Government added as party

3. Where under rule 2 Government is added as a defendant in a suit, the Attorney General [1][* * *] or the Government shall not be entitled to or liable for costs in the Court which ordered the addition unless the Court having regard to all the circumstances of the case for any special reason otherwise orders.

Application of Order to appeals

4. In the application of this Order to appeals the word "defendant" shall be held to include a respondent and the word "suit" an appeal.]

ORDER XXVIII

SUITS BY OR AGAINST MILITARY OR NAVAL MEN OR AIRMEN

Officers, soldiers, sailors or airmen who cannot obtain leave may authorise any person to sue or defend for them

1. (1) Where any officer, soldier, sailor or airman actually in the service of the [2][Republic] in such capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the officer, soldier, sailor or airman in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer, soldier, sailor or airman is serving in military, naval or air force staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall counter sign the authority, which shall be filed in Court.

(3) When so filed the counter signature shall be sufficient proof that the authority was duly executed, and that the officer, soldier, sailor or airman by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

---

1 The comma and words ", the Advocate-General" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

2 The word "Republic" was substituted, for the word "State" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Explanation.-In this Order the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, ship, detachment or deport to which the officer, soldier, sailor or airman belongs.

Person so authorised may act personally or appoint pleader

2. Any person authorised by an officer, soldier, sailor or airman to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer, soldier, sailor or airman could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer, soldier, sailor or airman.

Service on person so authorised, or on his pleader, to be good service

3. Processes served upon any person authorised by an officer, soldier, sailor or airman under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

ORDER XXIX

SUITS BY OR AGAINST CORPORATIONS

Subscription and verification of pleading

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Service on corporation

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served-

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

Power to require personal attendance of officer of corporation

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material question relating to the suit.

ORDER XXX

SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

Suing of partners in name of firm

1. (1) Any two or more persons claiming or being liable as partners and carrying on business in Bangladesh may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of actions, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such person.

Disclosure of partners' names

2. (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless continue in the name of the firm.

Service

3. Where persons are sued as partners in the name of their firm, the summons shall be served either–

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within Bangladesh upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without Bangladesh:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within Bangladesh whom it is sought to make liable.

Right of suit on death of partner

4. (1) Notwithstanding anything contained in section 45 of the Contract Act, 1872, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have-

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

Notice in what capacity served

5. Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Appearance of partners

6. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

No appearance except by partners

7. Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

Appearance under protest

8. Any person served with summons as a partner under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

Suits between co-partners

9. This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

Suit against person carrying on business in name of other than his own

10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

ORDER XXXI

SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

Representation of beneficiaries in suits concerning property vested in trustees, etc

1. In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

Joinder of trustees, executors and administrators

2. Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside Bangladesh, need not be made parties.

3. Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

Husband of married executrix not to join

ORDER XXXII

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

Minor to sue by next friend

2. (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

Where suit is instituted without next friend, plaint to be taken off the file

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

3. (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

Guardian for the suit to be appointed by Court for minor defendant

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree.

Who may act as next friend or be appointed guardian for the suit

4. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

Representation of minor by next friend or guardian for the suit

5. (1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained new, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Receipt by next friend or guardian for the suit of property under decree for minor

6. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either–

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

Agreement or compromise by next friend or guardian for the suit

7. (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

Retirement of next friend

8. (1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor.

Removal of next friend

9. (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within Bangladesh, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

Stay of proceedings on removal, etc., of next friend

10. (1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court, may appoint such person as it thinks fit.

Retirement, removal or death of guardian for the suit

11. (1) Where the guardian for the suit desires to require or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

Course to be followed by minor plaintiff or applicant on attaining majority

12. (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus:-

"A. B., late a minor, by C. D., his next friend, but now having attained majority.

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made *ex parte:* but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

Where minor co-plaintiff attaining majority desires to repudiate suit

13. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

Unreasonable or improper suit

14. (1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness of impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

Application of rules to persons of unsound mind

15. The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be or unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

Saving for Princess and Chiefs

16. Nothing in this order shall apply to a Sovereign Prince or Ruling Chief suing or being sued in the name of his State, or being sued by direction of the Government in the name of an agent or in any other name, or shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

ORDER XXXIII

SUITS BY PAUPERS

Suits may be instituted in *forma pauperis*

1. Subject to the following provisions, any suit may be instituted by a pauper.

Explanation.–A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth [1][five thousand Taka] other than his necessary wearing-apparel and the subject-matter of the suit.

Contents of application

2. Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

Presentation of application

3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

---

[1] The words "five thousand Taka" were substituted, for the words "one hundred Taka" by section 5 of the Code of Civil Procedure (Amendment) Act, 2006 (Act No. VIII of 2006).

Examination of applicant

4. (1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If presented by agent, Court may order applicant to be examined by commission

(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

Rejection of application

5. The Court shall reject an application for permission to sue as a pauper–

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

(b) where the applicant is not a pauper, or

(c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

Notice of day for receiving evidence of applicant's pauperism

6. Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

Procedure at hearing

7. (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

[1][**7A.** Notwithstanding the provisions of rules 6 and 7, the Court may directly grant the application, if, upon furnishing of a certificate by the plaintiff from a local government representative or its authorized official to the effect that the plaintiff is a pauper within the meaning of rule 1 of Order XXXIII of the Code, it is satisfied to believe that the plaintiff is really a pauper.]

Procedure if application admitted

8. Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

Dispaupering

9. The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered–

(a) if he is guilty of vexatious or improper conduct in the course of the suit;

(b) if it appears that his means are such that he ought not to continue to sue as a pauper; or

(c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

Costs where pauper succeeds

10. Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

---

[1] Rule 7A was inserted by section 5 of the Code of Civil Procedure (Amendment) Act, 2006 (Act No. VIII of 2006).

11. Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed,- Procedure where pauper fails

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or

(b) because the plaintiff does not appear when the suit is called on for hearing,

the Court shall order the plaintiff or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

[1][**11A.** Where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff the Court shall order that the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper shall be recoverable by the Government from the estate of the deceased plaintiff.] Procedure where pauper suit abates

12. The Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10, rule 11 or rule 11A. Government may apply for payment of court-fees

13. All matters arising between the Government and any party to the suit under rule 10, rule 11, rule 11A or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47. Government to be deemed a party

14. Where an order is made under rule 10, rule 11 or rule 11A the Court shall forthwith cause a copy of the decree or order to be forwarded to the Collector, who may, without prejudice to any other mode of recovery, recover the amount of court-fees specified therein from the person or property liable for the payment as if it were an arrear of land revenue. Recovery of amount of court-fees

15. An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the Refusal to allow applicant to sue as pauper to bar subsequent

---

[1] Rule 11A was inserted by section 2 of the Code of Civil Procedure (Amendment) Act, 1942 (Act No. XXIV of 1942).

application of like nature

costs (if any) incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper.

Costs

16. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

ORDER XXXIV

SUITS RELATING TO MORTGAGES OF IMMOVEABLE PROPERTY

Parties to suits for foreclosure sale and redemption

1. Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation.- A puisne mortgage may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

Preliminary decree in foreclosure suit

2. (1) In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree -

(a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for-

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon; or

(b) declaring the amount so due at that date; and

(c) directing–

(i) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged

property, and shall, if so required, retransfer the property to the defendant at his costs free from the mortgage and from all encumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Final decree in foreclosure suit

3. (1) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree-

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and, if necessary,-

(b) ordering him to re-transfer at the cost of the defendant the mortgaged property as directed in the said decree,

and, also, if necessary,–

(c) ordering him to put the defendant in possession of the property.

(2) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree declaring that the defendant and all persons claiming through or under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property.

(3) On the passing of a final decree under sub-rule (2), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

Preliminary decree in suit for sale

4. (1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (i) of sub-rule (1) of rule 2, and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree for sale is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

Power to decree sale in foreclosure suit

(3) In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds, the Court may, at the instance of any party to the suit or of any other person interested in the mortgage-security or the right of redemption,

pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(4) Where, in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. 11, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Final decree in suit for sale

5. (1) Where, on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall, on application made by the defendant in this behalf, pass a final decree or, if such decree has been passed, an order-

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and, if necessary,–

(b) ordering him to transfer the mortgaged property as directed in the said decree,

and, also, if necessary,–

(c) ordering him to put the defendant in possession of the property.

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the defendant, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent of the amount of the purchase-money paid into Court by the purchaser.

Where such deposits have been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.

Recovery of balance due on mortgage in suit for sale

6. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff, the Court, on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance.

Preliminary decree in redemption suit

7. (1) In a suit for redemption, if the plaintiff succeeds, the Court shall pass a preliminary decree–

(a) ordering that an account be taken of what was due to the defendant at the date of such decree for–

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date, in respect of his mortgage-security, together with interest thereon; or

(b) declaring the amount so due at that date; and

(c) directing–

(i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in

rule 11, the defendant shall deliver up to the plaintiff, or to such person as the plaintiff appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the plaintiff at his cost free from the mortgaged and from all encumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall also, if necessary, put the plaintiff in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interests, the defendant shall be entitled to apply for a final decree–

(a) in the case of a mortgage other than a usufructuary mortgage, a mortgage by conditional sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgaged property be sold, or

(b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before the passing of a final decree for foreclosure or sale, as the case may be, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

Final decree in redemption suit

8. (1) Where, before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale help in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order-

(a) ordering the defendant to deliver up the documents referred to in the preliminary decree,

and, if necessary,–

(b) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree,

and, also, if necessary,–

(c) ordering him to put the plaintiff in possession of the property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the plaintiff, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent of the amount of the purchase-money paid into Court by the purchaser.

Where such deposits have been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the defendant in this behalf,–

(a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property; or

(b) in the case of any other mortgage, not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same.

[1][8A. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the defendant, the Court, on application by him, may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance.]

Recovery of balance due on mortgage in suit for redemption

9. Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him: and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

Decree where nothing is found due or where mortgagee has been overpaid

10. In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless in the case of costs or the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment.

Costs of mortgagee subsequent to decree

11. In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:–

Payment of interest

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage–

(i) on the principal amount found or declared due on the mortgage,-at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable,

(ii) on the amount of the costs of the suit awarded to the mortgagee, –at such rate as the Court deems reasonable from the date of the preliminary decree, and

---

[1] Rule 8A was inserted by section 5 of the Transfer of Property (Amendment) Supplementary Act, 1929 (Act No. XXI of 1929).

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage money,–at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or failing both such rates, at nine per cent. per annum; and

(b) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable–

(i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause; and

(ii) on the amount adjudged due to the mortgagee in respect of such further costs, charges and expenses as may be payable under rule 10.

Sale of property subject to prior mortgage

12. Where any property the sale of which directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Application of proceeds

13. (1) Such proceeds shall be brought into Court and applied as follows:–

firstly, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and costs, properly incurred in connection therewith;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, the payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882.

Suit for sale necessary for bringing mortgaged property to sale

14. (1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882, has not been extended.

Mortgages by the deposit of title-deeds and charges

15. All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds within the meaning of section 58, and to a charge within the meaning of section 100 of the Transfer of Property Act, 1882.

ORDER XXXV

INTERPLEADER

Plaint in interpleader-suits

1. In every suit of interpleader the plaint shall, in addition to other statements necessary for plaints, state-

(a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants.

Payment of thing claimed into Court

2. Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

Procedure where defendant is

3. Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is

suing plaintiff

pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Procedure at first hearing

4. (1) At the first hearing the Court may-

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed award him his costs, and dismiss him from the suit; or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct-

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

Agents and tenants may not institute interpleader-suits

5. Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any person other than persons making claim through such principals or landlords.

Illustrations

(a) A deposit a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

Charge for plaintiff's costs

6. Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

ORDER XXXVI

SPECIAL CASE

Power to state case for Court's opinion

1. (1) Parties claiming to be interested in the decisions of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,−

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

Where value of subject-matter must be stated

2. Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Agreement to be filed and registered as suit

3. (1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(2) The agreement when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

Parties to be subject to Court's jurisdiction

4. Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

Hearing and disposal of case

5. (1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suits so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties or after taking such evidence as it thinks fit,–

(a) that the agreement was duly executed by them,

(b) that they have a bona fide interest in the question stated therein, and

(c) that the same, is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

ORDER XXXVII

SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS

Application of Order

1. This Order shall apply only to the High Court Division and to the District Court.

Institution of summary suits upon bills of exchange, etc.

2. (1) All suits upon bills of exchange, hundies or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4 in Appendix B or in such other form as may be from time to time prescribed.

(2) In any case which the plaint and summons are in such forms, respectively the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree-

(a) for the principal sum due on the instrument and for interest calculated in accordance with the provisions of section 79 or section 80, as the case may be, of the Negotiable Instruments Act, 1881, up to the date of the institution of the suit, or for the sum mentioned in the summons, whichever is less, and for interest up to the date of the decree at the same rate or at such other rate as the Court thinks fit; and

(b) for such subsequent interest, if any, as the Court may order under section 34 of this Code; and

(c) for such sum for costs as may be prescribed:

Provided that, if the plaintiff claims more than such fixed sum for costs, the costs shall be ascertained in the ordinary way.

(3) A decree passed under this rule may be executed forthwith.

Defendant showing defence on merits to have leave to appear

3. (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into court, giving security, framing and recording issues or otherwise as the Court thinks fit.

Power to set aside decree

4. After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to order bill, etc., to be deposited with officer of Court

5. In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of cost of noting non-acceptance of dishonoured bill or note

6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

Procedure in suits

7. Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

ORDER XXXVIII

ARREST AND ATTACHMENT BEFORE JUDGMENT

Arrest before Judgment

Where defendant may be called upon to furnish security for appearance

1. Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,-

(a) that the defendant, with intend to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,–

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(b) that the defendant is about to leave Bangladesh under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

Security

2. (1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Procedure on application by surety to be discharged

3. (1) A surety for the appearance of a defendant may at any time apply to the Court in which he become such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

Procedure where defendant fails to furnish security or find fresh security

4. Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty Taka:

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

Attachment before Judgment

Where defendant may be called upon to furnish security for production of property

5. (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intend to obstruct or delay the execution of any decree that may be passed against him,–

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

Attachment where cause not shown or security not furnished

6. (1) where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such order as it thinks fit.

Mode of making attachments

7. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

8. Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

Investigation of claim to property attached before judgment

9. Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Removal of attachment when security furnished or suit dismissed

10. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Attachment before judgment not to affect rights of strangers nor bar decree-holder from applying for sale

11. Where property is under attachment by virtue of the provisions of this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

Property attached before judgment not to be re-attached in execution of decree

12. Nothing in this Order shall be deemed to authorise the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

Agricultural produce not attachable before judgment

13. Nothing in this Order shall be deemed to empower any Court of Small Causes to make an order for the attachment of immoveable property.

Small Cause Court not to attach immoveable property

ORDER XXXIX

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Temporary Injunctions

Cases in which temporary injunction may be granted

1. Where in any suit it is proved by affidavit or otherwise–

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

Injunction to restrain repetition or continuance of breach

2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms, as to the duration of the injunction, keeping an account, giving security or otherwise, as the Court thinks fit.

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

3. The Court shall in all cases, before granting an injunction, direct notice of the application for the same to be given to the opposite party [1][and be satisfied that notice has been duly served, or could not be served on account of refusal by the opposite party to receive, or otherwise]:

Before granting injunction Court to direct notice to opposite party

Provided that, except in the case of sale of goods for default in payment, at the stipulated time, of a debt in respect of which the goods were pledged with any bank, the Court may, where it appears that the object of granting injunction would be defeated by the delay, dispense with such notice.

[2][**3A.** Any notice directed to be served under rule 3 shall be returned, with or without service, to the Court within seven days of issuance; and if the notice is returned without service, the Court shall cause the notice to be served again within seven days thereof in accordance with the provision of rule 20 of Order V, so far as may be applicable, and such service shall be deemed as due service of the notice.]

Mode of service of unserved returned notices

4. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Order for injunction may be discharged, varied or set aside

5. An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Injunction to corporation binding on its officers

[3][**5A.** (1) Court shall not, without serving reasonable notice to the Government Pleader and giving him or any Pleader authorised by him in that behalf an opportunity of being heard, pass *ex parte* any order of *ad interim* or temporary injunction under any of the aforesaid rules of this Order at the instance of a private party against the Government or any statutory public authority, if such order is likely to prejudice or interfere with

No order of *ad interim* or temporary injunction without hearing the opposite party

---

1 The words and commas " and be satisfied that notice has been duly served, or could not be served on account of refusal by the opposite party to receive, or otherwise" were inserted by section 9 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).

2 Rule 3A was inserted by section 9 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).

3 Rule 5A was inserted by section 9 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).

Any measure designed to implement any development programme, or any development work or otherwise harm public interest.

(2) The Court shall, in all cases where a private party makes an application for *ad interim* or temporary injunction against another private party, direct notice of the application to the opposite party, unless it appears that the object or granting the injunction would be defeated by the delay.

(3) If any order of *ad interim* or temporary injunction is passed *ex-parte* at the instance of a private party against another private party, the Court shall hear and dispose of the matter on merit within seven days of appearance of the opposite party, unless the period is extended further at the instance of the opposite party; and any such order of *ad interim* or temporary injunction shall stand vacated, if the party at whose instance it was passed, prays for adjournment, or on being called upon by the Court, fails to attend hearing.

(4) If the suit is ultimately decided against the party at whose instance an *ad interim* or temporary injunction is granted, and it appears that on account of such injunction the other party has suffered loss, the Court, while deciding the suit shall award such compensatory cost not exceeding ten thousand taka in favour of that other party, in addition to other cost as he may be entitle to.

(5) The cost awarded under sub-rule (4) shall not disentitle the party, if he is otherwise entitled to, to claim further compensation, on account of any loss which he may have suffered due to grant of temporary injunction; but such cost received under sub-rule (4) shall be taken into account if such further compensation is claimed.]

Interlocutory Orders

Power to order interim sale

6. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

Detention, preservation, inspection, etc., of subject-matter of suit

7. (1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,–

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorised to enter under this rule.

Application for such orders to be after notice

8. (1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institution of the suit.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

When party may be put in immediate possession of land the subject-matter of suit

9. Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

Deposit of money, etc., in Court

10. Where the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

ORDER XL

APPOINTMENT OF RECEIVERS

Appointments of receivers

1. (1) Where it appears to the Court to be just and convenient, the Court may by order–

(a) appoint a receiver of any property, whether before or after decree;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver; and

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

Remuneration

2. The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

Duties

3. Every receiver so appointed shall–

(a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;

(b) submit his accounts at such periods and in such form as the Court directs;

(c) pay the amount due from him as the Court directs; and

(d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Enforcement of receiver's duties

4. Where a receiver–

(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay the amount due from him as the Court directs, or

(c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

When Collector may be appointed receiver

5. Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interest of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

ORDER XLI

APPEALS FROM ORIGINAL DECREES

Form of appeal. What to accompany memorandum

1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the Judgment on which it is founded.

Contents of memorandum

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

Grounds which may be taken in appeal

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Rejection or amendment of memorandum

3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or to be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

One of several plaintiffs of defendants may obtain reversal of whole decree where it proceeds on ground common to all

4. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

Stay of Proceedings and of Execution

Stay by Appellate Court

5. (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Stay by Court which passed the decree

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

Security in case of order for execution of decree appealed from

6. (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immoveable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

7. [*Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.*]

Exercise of powers in appeal from order made in execution of decree

8. The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on Admission of Appeal

Registry of memorandum of appeal

9. (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of Appeals

(2) Such book shall be called the Register of Appeals.

Appellate Court may require appellant to furnish security for costs

10. (1) The Appellate Court may, in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Where appellant resides out of Bangladesh

Provided that the Court shall demand such security in all cases in which the appellant is residing out of Bangladesh, and is not possessed of any sufficient immoveable property within Bangladesh other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

Power to dismiss appeal without sending notice to Lower Court

11. (1) The appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

Day for hearing appeal

12. (1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Adjournment in appeal

[1][**12A.** (1) The Appellate Court shall not grant more than three adjournments for hearing of an appeal at the instance of either party to the appeal, and any adjournment granted to a party beyond the aforesaid limit shall make such party liable to pay such cost which shall not be less than two hundred taka and more than one thousand taka to the other party as the Court may deem appropriate and determine, non-compliance with which, by the appellant shall render the appeal liable to be dismissed and, by the respondent shall render the appeal liable to be disposed of *ex parte.*

(2) An appeal dismissed or disposed of *ex parte* under sub-rule (1) shall not be revived for hearing unless the party, for whose non-compliance the appeal was dismissed or

---

[1] Rule 12A was inserted by section 6 of the Code of Civil Procedure (Amendment) Act, 2006 (Act No. VIII of 2006).

disposed of *ex parte*, makes, within thirty days of such dismissal or *ex parte* disposal, an application to the court for such revival; and upon such application being made, the Court shall award such cost as shall not be less than two hundred taka and more than one thousand taka as it may deem appropriate and determine, and the cost being deposited, the appeal shall be revived for hearing without any further proceeding; and the cost deposited in the Court shall be paid by it to the other party:

Provided that no appeal shall be revived more than once at the instance of the same party under this rule.

(3) The Appellate Court shall not, of its own, order any adjournment at the stage of hearing of appeal without recording reasons therefor.]

Appellate Court to give notice to Court whose decree appealed from

13. (1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

Transmission of papers to Appellate Court

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable dispatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Copies of exhibits in Court whose decree Appealed from

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.

Publication and service of notice of day for hearing appeal

14.[1][(1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred and shall be served on the respondent in the manner provided for the service on a defendant of a summons to appear and answer. Simultaneously with the issue of such summons a copy of the notice shall be served by registered post with acknowledgment due addressed to the respondent and all

---

[1] Sub-rule (1) was substituted, for sub-rule (1) by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

the provisions applicable to summons upon a defendant in a suit, and to proceedings with reference to the service thereof, shall apply to the service of such notice.]

Appellate Court may itself cause notice to be served

(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

Contents of notice

15. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Prosecution of an appeal

[1][**15A.** Where, after admission of an appeal in the High Court Division, the rules of the High Court Division, require the appellant to take any steps in the prosecution of the appeal, and the appellant fails to take such steps within the time allowed or extended under the said rules, the Court may direct the appeal to be dismissed for want of prosecution or may pass such other order as it thinks fit.]

Procedure on Hearing

Right to begin

16. (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

Dismissal of appeal for appellant's default

17. (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Hearing appeal *ex parte*

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs

18. Where on the day fixed, or on any other day to which the hearing maybe adjourned, it is found that the notice to the respondent had not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed:

---

[1] Rule 15A was added by the High Court of Judicature at Dacca, Notification No. 4497 G. dated 6-6-1952, published in the Dacca Gazette, 1952, Part I.

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

Re-admission of appeal dismissed for default

19. (1) Where an appeal is dismissed under rule 11, sub-rule (2), or rule 15A or rule 17 or rule 18, the appellant may apply to the Appellant Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

(2) Provisions of section 5 of the Limitation Act, 1908 shall apply to applications under sub-rule (1).

Direct re-admission of appeal

[1][**19A.** (1) Notwithstanding anything contained in rule 19 or any other law, the Court may, in order to avoid delay and expedite disposal, directly re-admit without requiring the appellant to adduce evidence to satisfy it about sufficient causes as required under rule 19:

Provided that the appeal under this rule shall not be re-admitted unless an application, supported by affidavit, praying for such re-admission is made to the Court within thirty days of the date on which the appeal is dismissed for default:

Provided further that no appeal shall be re-admitted more than once under this rule.

(2) As soon as an order under sub-rule (1) is made to re-admit an appeal, the Court shall cause notice thereof to be served at the cost of the appellant upon the respondent who appeared in the appeal.]

Power to adjourn hearing and direct persons appearing interested to be made respondents

20. Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

---

[1] Rule 19A was inserted by section 6 of the Code of Civil Procedure (Amendment) Act, 2006 (Act No. VIII of 2006).

Re-hearing on application of respondent against whom *ex parte* decree made	**21.** Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him[1][: Provided that no Appeal shall be re-heard more than once under this rule.]
Direct re-hearing of appeal	[2][**21A.** (1) Notwithstanding anything contained in rule 21 or any other law, the Court may, in order to avoid delay and expedite disposal, directly re-hear an appeal which is heard *ex parte*, without requiring the respondent to adduce evidence to satisfy it about sufficient causes as required under rule 21, but requiring him to pay such cost not exceeding three thousand taka as it may deem appropriate and determine:
	Provided that an appeal under this rule shall not be re-heard unless an application, supported by affidavit, praying for such re-hearing is made to the Court within thirty days of the date on which the *ex parte* decree is passed against the respondent:
	Provided further that no appeal shall be re-heard more than once under this rule.
	(2) As soon as an order under sub-rule (1) is made to re-hear an appeal, the Court shall cause notice thereof to be served at the cost of the respondent upon the appellant.]
Upon hearing, respondent may object to decree as if he had preferred separate appeal	**22.** (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

---

1 The colon ":" was substituted for the full stop "." and thereafter proviso was inserted by section 15(a) of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

2 Rule 21A was inserted by section 6 of the Code of Civil Procedure (Amendment) Act, 2006 (Act No. VIII of 2006).

(2) Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

Form of objection and provisions applicable thereto

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objections, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice of the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.

23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Remand of case by Appellate Court

24. Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

Where evidence on record sufficient, Appellate Court [1][shall] determine case finally

---

[1] The word "shall" was substituted for the word "may" by section 15(b) of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from

25. Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.

Findings and evidence to be put on record. Objections to finding

26. (1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any findings.

Determination of appeal

(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

Production of additional evidence in Appellate Court

27. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if–

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

Mode of taking additional evidence

28. Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decrees the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

Points to be defined and recorded

29. Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Judgment in Appeal

Judgment when and where pronounced

30. [1][(1)] The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

[2][(2) Notwithstanding anything contained in sub-rule (1), if neither party nor his pleader appears when the appeal is called on for hearing, the Appellate Court may, for reasons to be recorded in writing, if considers the materials on record are sufficient to dispose of the appeal on merits, pronounce judgment in open Court immediately or on a date to be fixed by it.]

Contents, date and signature of Judgment

31. The judgment of the Appellate Court shall be in writing and shall state–

(a) the points for determination;
(b) the decision thereon;
(c) the reasons for the decision; and,
(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

---

[1] Sub-rule (1) was numbered by section 15(c) of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

[2] Sub-rule (2) was added by section 15(c) of the Code of Civil Procedure (Amendment) Ordinance, 2025 (Ordinance No. XVIII of 2025).

32. The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

What judgment may direct

33. The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection:

Power of Court of Appeal

Provided that the Appellate Court shall not make any order under section 65A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

Illustration

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

Dissent to be recorded

34. Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Decree in Appeal

Date and contents of decree

35. (1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it :

Judge dissenting from judgment need not sign decree

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Copies of judgment and decree to be furnished to parties

36. Certified copies of the judgment, and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

Certified copy of decree to be sent to Court whose decree appealed from

37. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civils suits.

ORDER XLII

APPEALS FROM APPELLATE DECREES

Procedure

1. The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

ORDER XLIII

APPEALS FROM ORDERS

Appeals from orders

1. An appeal shall lie from the following orders under the provisions of section 104, namely:–

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court;

(b) an order under rule 10 of Order VIII pronouncing judgment against a party;

(c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;

(e) an order under rule 4 of Order X pronouncing judgment against a party;

(f) an order under rule 21 of Order XI;

(g) an order under rule 10 of Order XVI for the attachment of property;

(h) an order under rule 20 of Order XVI pronouncing judgment against a party;

(i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;

[1][(ii) an order under rule 60 of Order XXI releasing a property from attachment;

(iii) an order under rule 61 of Order XXI disallowing a claim to property attached;]

(j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;

(k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(l) an order under rule 10 of Order XXII giving or refusing to give leave;

(m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction;

---

[1] Clauses (ii) and (iii) were inserted by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

(n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(o) an order under rule 2, rule 4 or rule 7 of Order XXXIV refusing to extend the time for the payment of mortgage-money;

(p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;

(q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;

(r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX;

(s) an order under rule 1 or rule 4 of Order XL;

(t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;

(u) an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

(v) an order made by any Court other than the High Court Division refusing the grant of a certificate under rule 6 of Order XLV;

(w) an order under rule 4 of Order XLVII granting an application for review.

Procedure

2. The rules of Order XLI shall apply, so far as may be, to appeals from orders.

ORDER XLIV

PAUPER APPEALS

Who may appeal as pauper

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable:

Procedure on application for admission of appeal

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Inquiry into pauperism

2. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the order of the Appellate Court by the Court from whose decision the appeal is preferred:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

ORDER XLV

APPEALS TO THE [1][APPELLATE DIVISION]

"Decree" defined

1. In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

Application to Court whose decree complained of

2. Whoever desires to appeal to the [1][Appellate Division] shall apply by petition to the Court whose decree is complained of.

Certificate as to value or fitness

3. (1) Every petition shall state the grounds of appeal and pay for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is otherwise a fit one for appeal to the [1][Appellate Division].

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Consolidation of suits

4. For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidate but suits decided by separate judgments shall not be consolidate notwithstanding that they involve substantially the same questions for determination.

---

[1] The words "Appellate Division" were substituted, for the words "Supreme Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Remission of dispute to Court to first instance

5. In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to the [1][Appellate Division], the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the Court of first instance, which last-mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.

Effect of refusal of certificate

6. Where such certificate is refused, the petition shall be dismissed.

Security and deposit required on grant of certificate

7. Where the certificate is granted, the applicant shall, within six weeks from the date of the grant of the certificate, or such further period as the Court may upon cause shown allow except when the Government is the applicant,−

(a) furnish security in case or in Government securities for the costs of the respondent except when the Government is the applicant, and

(b) deposit the amount required to defray the expense of translating, transcribing, indexing, printing and transmitting to the [1][Appellate Division] a correct copy of the whole record of the suit, except−

(1) formal documents directed to be excluded by any Rule of the [1][Appellate Division] in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and

(4) such other documents as the High Court Division may direct to be excluded:

Provided that the Court at the time of granting the

---

[1] The words "Appellate Division" were substituted, for the words "Supreme Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

certificate may, after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished:

Provided, further, that no adjournment shall be granted to an opposite party to context the nature of such security.

Admission of appeal and procedure thereon

8. Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall–

(a) declare the appeal admitted,

(b) give notice thereof to the respondent,

(c) transmit to the [1][Appellate Division] under the seal of the Court a correct copy of the said record, except as aforesaid, and

(d) give to either one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

Revocation of acceptance of security

9. At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Power to dispense with notices in case of deceased parties

[2][**9A.** Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court:

Provided that notices under sub-rule (2) of rule 3 and under rule 8 shall be given by affixing the same in some conspicuous place in the Court-house of the Judge of the District in which the suit was originally brought, and by publication in such newspapers as the Court may direct.]

---

1 The words "Appellate Division" were substituted, for the words "Supreme Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

2 Rule 9A was inserted by section 4 of the Code of Civil Procedure (Amendment) Act, 1920 (Act No. XXVI of 1920).

Power to order further security or payment

10. Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to the [1][Appellate Division], such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the court, other and sufficient security, or to make, within like time, the required payment.

Effect of failure to comply with order

11. Where the appellant fails to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of the [1][Appellate Division],

and in the meantime execution of the decree appealed from shall not be stayed.

Refund of balance deposit

12. When the copy of the record, except as aforesaid, has been transmitted to the [1][Appellate Division], the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

Powers of Court pending appeal

13. (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,-

(a) impound any moveable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which the [1][Appellate Division] may make on the appeal, or

---

[1] The words "Appellate Division" were substituted, for the words "Supreme Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any order which [1][Appellate Division] may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

Increase of security found inadequate

14. (1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the Court,–

(a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, excuse the decree appealed from as if the appellant had furnished no such security;

(b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of appeal as it thinks fit.

Procedure to enforce orders of the Appellate Division

15. (1) Whoever desires to obtain execution of any order of the [1][Appellate Division] shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the [1][Appellate Division] was preferred.

(2) Such Court shall transmit the order of the [1][Appellate Division] to the Court which passed the first decree appealed from, or to such other Court as the [1][Appellate Division] by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution

---

[1] The words "Appellate Division" were substituted, for the words "Supreme Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

of the same; and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3) When any monies expressed to be payable in British Currency are payable in Bangladesh under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed at the date of the making of the order for the adjustment of financial transactions between the Government and His Majesty's Government in the United Kingdom.

(4) Unless the [1][Appellate Division] is pleased otherwise to direct, no order of the [1][Appellate Division] shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.

Appeal from order relating to execution

16. The orders made by the Court which executes the order of the [1][Appellate Division], relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

17. [*Omitted by the Federal Court Act, 1941 (Act No. XXI of 1941), section 2.*]

ORDER XLVI

REFERENCE

Reference of question to High Court Division

1. Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage

---

[1] The words "Appellate Division" were substituted, for the words "Supreme Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court Division.

Court may pass decree contingent upon decision of High Court Division

2. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court Division on the point referred;

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court Division upon the reference.

Judgment of High Court Division to be transmitted, and case disposed of accordingly

3. The High Court Division, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court Division.

Cost of reference to High Court Division

4. The costs (if any) consequent on a reference for the decision of the High Court Division shall be costs in the case.

Power to alter, etc., decree of Court making reference

5. Where a case is referred to High Court Division under rule 1, the High Court Division may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

Power to refer to High Court division questions as to jurisdiction in small causes

6. (1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court Division with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court Division may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes

7. (1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court Division with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court Division may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court Division under this rule, the High Court Division may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

ORDER XLVII

REVIEW

Application for review of judgment

1. (1) Any person considering himself aggrieved–

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by same other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

To whom applications for review may be made

2. An application for review of a decree or order of a Court, not being the High Court Division, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (a), be disposed of by his successor.

Form of applications for review

3. The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

Application where rejected

4. (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application where granted

(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that–

(*a*) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for: and

(*b*) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

Application for review in Court consisting of two or more Judges

5. Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of

six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Application where rejected

6. (1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

Order of rejection not appealable. Objection to order granting application

7. (1) An order of the Court rejecting the applications shall not be appealable; but an order granting an application may be objected to on the ground that the application was−

(a) in contravention of the provisions of rule 2,

(b) in contravention of the provisions of rule 4, or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

Registry of application granted, and order for re-hearing

8. When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Bar of certain applications

9. No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

ORDER XLVIII

MISCELLANEOUS

Process to be served at expense of party issuing

1. (1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Costs of service

(2) The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

Orders and notices how served

2. All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

Use of forms in appendices

3. The forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned.

ORDER XLIX

HIGH COURT DIVISION

Who may serve processes of High Court Division

1. Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court Division, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the [1][advocates] in the suits, or by persons employed by them, or by such other persons as the High Court Division, by any rule or order, directs.

Saving in respect of High Court Division

2. Nothing in this schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by the High Court Division.

---

[1] The word "advocates" was substituted, for the word "attorneys" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Application of rules

3. The following rules shall not apply to [1][the High Court Division] in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:–

(1) rule 10 and rule 11, clauses (d) and (c), of Order VII;

(2) rule 3 of Order X;

(3) rule 2 of Order XVI;

(4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;

(5) rules 1 to 8 of Order XX; and

(6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum);

and rule 35 of Order XLI shall not apply to the High Court Division in the exercise of its appellate jurisdiction.

ORDER L

[2][* * *] SMALL CAUSE COURTS

Small Cause Courts

1. The provisions hereinafter specified shall not extend to Courts constituted under the [3][* * *] Small Cause Courts Act, 1887, or to courts exercising the jurisdiction of a Court of Small Causes under the said Act, that is to say–

(a) so much of this schedule as relates to–

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;

---

1 The words "the High Court Division" were substituted, for the words "any such High Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

2 The word "PROVINCIAL" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

3 The word "Provincial" was omitted, by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(ii) the execution of decrees against immoveable property or the interest of a partner in partnership property;

(iii) the settlement of issues; and

(b) the following rules and orders,–

Order II, rule 1 (frame of suit);

Order X, rule 3 (record of examination of parties);

Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment;

Order XVIII, rules 5 to 12 (evidence);

Order XLI to XLV (appeals);

Order XLVII, rules 2, 3, 5, 6, 7 (review);

Order LI.

ORDER LI.– [*Omitted by the Adaptation of Central Acts and Ordinances Order, 1949.*]