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## THE CODE OF CIVIL PROCEDURE, 1908

ACT NO. V OF 1908

[21st March, 1908]

### An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature. \*

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature;

It is hereby enacted as follows:-

#### PRELIMINARY

1. (1) This Act may be cited as the Code of Civil Procedure, 1908. Short title, commencement and extent

(2) It shall come into force on the first day of January, 1909.

(3) It extends to the whole of Bangladesh.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions

(1) "Code" includes rules:

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within <sup>1</sup>[\* \* \*] section 144, but shall not include—

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\* Throughout this Act, unless otherwise provided, the words "Bangladesh", "High Court Division", "the High Court Division", "Government" and "Taka" were substituted, for the words "Pakistan", "High Court" or "High Courts" or "any High Court" or "such High Court", "a High Court", "Central Government" or "Provincial Government" or "Central Government or the Provincial Government" or "Appropriate Government" or "Central Government or a Provincial Government" and "Rupees" or "Rs." respectively by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>1</sup> The words and figure "section 47 or" were omitted by the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

**Explanation.**—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

- (3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made;
- (4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of the High Court Division;
- (5) "foreign Court" means a Court situate beyond the limits of Bangladesh which has no authority in Bangladesh and is not established or continued by the Government;
- (6) "foreign judgment" means the judgment of a foreign Court;
- (7) "Government Pleader" includes any officer appointed by the Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader;
- (8) "Judge" means the presiding officer of a Civil Court;
- (9) "Judgment" means the statement given by the Judge of the grounds of a decree or order;
- (10) "Judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made;

- (11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;
- (12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvements made by the person in wrongful possession;
- (13) "movable property" includes growing crops;
- (14) "order" means the formal expression of any decision of a Civil Court which is not a decree;
- (15) "pleader" means any person entitled to appear and plead for another in Court <sup>1</sup>[\* \* \*];
- (16) "prescribed" means prescribed by rules;
- (17) "public officer" means a person falling under any of the following descriptions, namely:—
  - (a) every Judge;
  - (b) every member of the Civil Service of <sup>2</sup>[The Republic];
  - (c) every commissioned or gazetted officer in the military, naval or air forces of Bangladesh while in the service of the <sup>3</sup>[Republic];

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<sup>1</sup> The commas and words ", and includes an advocate, a vakil and an attorney of a High Court" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The words "The Republic" were substituted, for the words "Pakistan" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> 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).

- (d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties;
  - (e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
  - (f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
  - (g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interest of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and
  - (h) every officer in the service or pay of the <sup>1</sup>[Republic], or remunerated by fees or commission for the performance of any public duty:
- (18) "rules" means rules and forms contained in the First Schedule or made under section 122 or section 125;
  - (19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds; and
  - (20) "signed", save in the case of a judgment or decree, includes stamped.

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<sup>1</sup> The word "Republic" was substituted, for the word "Government" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

**3.** For the purposes of this Code, the District Court is subordinate to the High Court Division, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court Division and District Court.

Subordination  
of Courts

**4.** (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special <sup>1</sup>[\* \* \*] law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

Savings

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a land-holder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

**5.** (1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the Government may, by notification in the official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such notifications as the Government may prescribe.

Application  
of the Code  
to Revenue  
Courts

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any <sup>2</sup>[\* \* \*] law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

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<sup>1</sup> The words "or local" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The word "local" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Pecuniary  
Jurisdiction

**6.** Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

Small Cause  
Courts

**7.** The following provisions shall not extend to Courts constituted under the <sup>1</sup>[\* \* \*] 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 the body of the Code as relates to-
  - (i) suits excepted from the cognizance of a Court of Small Causes;
  - (ii) the execution of decrees in such suits;
  - (iii) the execution of decrees against immovable property; and
- (b) the following sections, that is to say,—
  - section 9,
  - sections 91 and 92,
  - sections 94 and 95 so far as they authorise or relate to—
    - (i) orders for the attachment of immovable property,
    - (ii) injunctions,
    - (iii) the appointment of a receiver of immovable property, or
    - (iv) the interlocutory orders referred to in clause (e) of section 94; and
  - sections 96 to 112 and 115.

**8.** *[Omitted by the Adaptation of Central Acts and Ordinance Order, 1949].*

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<sup>1</sup> 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).



**PART I**

## SUITS IN GENERAL

*Jurisdiction of the Courts and Res Judicata*

**9.** The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Courts to try all Civil suits unless barred

**Explanation.**—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

**10.** No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Bangladesh having jurisdiction to grant the relief claimed, or in any Court beyond the limits of Bangladesh established or continued by the Government and having like jurisdiction, or before the Supreme Court. Stay of suit

**Explanation.**—The pendency of a suit in a foreign Court does not preclude the Court in Bangladesh from trying a suit founded on the same cause of action.

**11.** No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. Res Judicata

**Explanation I.**—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

**Explanation II.**—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

**Explanation III.**—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

**Explanation IV.**—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

**Explanation V.**—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

**Explanation VI.**—Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Bar to further  
suit

**12.** Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

When foreign  
judgment not  
conclusive

**13.** A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of Bangladesh in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in Bangladesh.

**14.** The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

Presumption  
as to foreign  
judgments

*Place of Suing*

**15.** Every suit shall be instituted in the Court of the lowest grade competent to try it.

Court in which  
suits to be  
instituted

**16.** Subject to the pecuniary or other limitations prescribed by any law, suits—

Suits to be  
instituted  
where subject-  
matter situate

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate, or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

**Explanation.**—In this section 'property' means property situate in Bangladesh.

Suits for immovable property situate within jurisdiction of different Courts

**17.** Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

Place of institution of suit where local limits of jurisdiction of Courts are uncertain

**18.** (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under subsection (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

Suits for compensation for wrongs to person or movables

**19.** Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

*Illustrations*

- (a) A, residing in <sup>1</sup>[Chittagong] beats B in Dhaka. B may sue A either in Dhaka or in <sup>1</sup>[Chittagong].
- (b) A, residing in <sup>1</sup>[Chittagong] publishes in Dhaka statements defamatory of B. B may sue A either in Dhaka, or in <sup>1</sup>[Chittagong].

**20.** Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction.—

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually or voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually or voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

Other suits to be instituted where defendants reside or cause of action arises

**Explanation I.**—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

**Explanation II.**—A Corporation shall be deemed to carry on business at its sole or principal office in Bangladesh or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

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<sup>1</sup> The word "Chittagong" was substituted, for the word "Karachi" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

*Illustrations*

(a) A is a tradesman in Dhaka. B carries on business in <sup>1</sup>[Chittagong]. B, by his agent in Dhaka, buys goods of A and requests A to deliver them to the <sup>2</sup>[Bangladesh Biman]. A delivers the goods accordingly in Dhaka. A may sue B for the price of the goods either in Dhaka, where the cause of action has arisen, or in <sup>1</sup>[Chittagong], where B carries on business.

(b) A resides at <sup>3</sup>[Cox's Bazar], B at Dhaka and C at <sup>1</sup>[Chittagong]. A, B and C being together at <sup>4</sup>[Khulna], B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C <sup>5</sup>[at Khulna], where the cause of action arose. He may also sue them at Dhaka, where B resides, or at <sup>1</sup>[Chittagong], where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

Objections to  
jurisdiction

**21.** No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

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<sup>1</sup> The word "Chittagong" was substituted, for the word "Karachi" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The words "Bangladesh Biman" were substituted, for the words "Pakistan International Airways" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> The words "Cox's Bazar" were substituted, for the word "Muree" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>4</sup> The word "Khulna" was substituted, for the word "Bahawalpur" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>5</sup> The words "at Khulna" was substituted, for the word "Bahawalpur" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

**22.** Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

Power to transfer suits which may be instituted in more than one Court

**23.** (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

To what Court application lies

(2) Where such Courts are subordinate to different Appellate Courts <sup>1</sup>[\* \* \*], the application shall be made to the <sup>2</sup>[\* \* \*] High Court Division.

(3) [Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.<sup>3</sup>]

**24.** (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court Division or the District Court may at any stage—

General power of transfer and withdrawal

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and
  - (i) try or dispose of the same; or

<sup>1</sup> The words "but to the same High Court" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The word "said" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup>

- (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
- (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

Appearance of parties on transfer of suit, etc.

<sup>1</sup>[24A. (1) Where any suit is transferred under section 22, or any suit, appeal or other proceeding is transferred or withdrawn under sub-section (1) of section 24 on the application of a party, the Court ordering the transfer or withdrawal shall fix a date for the appearance of the parties before itself, if the suit, appeal or other proceeding is to be tried or disposed of by itself, or before the Court to which the case is so transferred.

(2) Where any suit, appeal or other proceeding is transferred from one Court to another, otherwise than on the application of a party, the parties thereto shall appear before the Court from which the suit, appeal or other proceedings is to be transferred, on the day already fixed for their appearance before that Court, and such Court shall then communicate the order of transfer to such parties and direct them to appear

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<sup>1</sup> Section 24A was inserted by section 7 of the Code of Civil Procedure (Amendment) Ordinance, 1962 (Ordinance No. XLIV of 1962).



before the Court to which the suit, appeal or other proceeding is to be transferred, either on the same day, or on such earliest day as may be reasonable having regard to the distance at which the other Court is located.]

**25.** [Omitted by the Central Laws (Statute Reform) Ordinance, 1960 (Ordinance No. XXI of 1960), Schedule.]

*Institution of Suits*

**26.** Every suit shall be instituted by the presentation of a  
 Institution of suits  
 plaint or in such other manner as may be prescribed.

*Summons and Discovery*

**27.** Where a suit has been duly instituted, a summons may  
 Summons to defendants  
 be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

**28.** [Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.]

**29.** Summonses and other processes issued by any Civil or  
 Service of foreign summonses  
 Revenue Court situate outside Bangladesh may be sent to the Courts in Bangladesh and served as if they were summonses issued by such Courts:

Provided that the <sup>1</sup>[Government] has by notification in the official Gazette declared the provisions of this section to apply to such Courts.

**30.** Subject to such conditions and limitations as may be  
 Power to order discovery and the like  
 prescribed, the Court may, at any time, either of its own motion or on the application of any party,-

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering

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<sup>1</sup> The word "Government" was substituted, for the words "Courts issuing such summonses or processes have been established or continued by the authority of the Central Government or that the Provincial Government of the Province in which such summonses or processes are to be served" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

Summons to witness

**31.** The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

Penalty for default

**32.** The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine upon him not exceeding five hundred Taka;
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

*Judgment and Decree*

Judgment and decree

**33.** The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

*Interest*

Interest

**34.** (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

#### *Costs*

**35.** (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers. Costs

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such.

<sup>1</sup>[**35A.** (1) If in any suit or other proceeding, including an execution proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim or defence, or any part of it, is false or vexatious, and if, thereafter, such claim or defence is disallowed, in whole or in part, the Court shall, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector, such cost by way of compensation which may, without exceeding the limit of the Court's pecuniary jurisdiction, extend upto twenty thousand taka. Compensatory costs in respect of false or vexatious claims or defences

(2) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

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<sup>1</sup> Section 35A was substituted, for the former section 35A by section 2 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).

(3) The amount of any cost awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.]

Cost for delay in making applications, etc., in respect of interlocutory matters

<sup>1</sup>[**35B.** (1) If at any stage of a suit or proceeding, an application or written objection is not filed within the time fixed by the Court, such application or written objection, as the case may be, shall not be admitted for hearing without payment by that party of such cost to the other party not exceeding two thousand taka.

(2) If after filing of written statement, any party to the suit makes an application in respect of any matter which, in the opinion of the Court, could and ought to have been made earlier, and is likely to delay the main proceeding of the suit, the Court may admit, but shall not hear and dispose of the application, without payment by that party of such cost to the other party not exceeding three thousand taka, as it shall determine and direct, and upon failure to pay the cost, the application shall stand rejected.]

## PART II

### EXECUTION

#### *General*

Application to orders

**36.** The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

Definition of Court which passed a decree

**37.** The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,—

- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

<sup>1</sup> Section 35B was inserted by section 3 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).

- (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

*Courts by which Decrees may be Executed*

**38.** A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

Court by which decree may be executed

**39.** (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

Transfer of decree

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
- (c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

**40.** [Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.]

**41.** The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

Result of execution proceeding to be certified

Powers of Court  
in executing  
transferred  
decree

**42.** (1) The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

(2) Without prejudice to the generality of the foregoing provision, the Court executing a decree sent to it shall have the following powers, namely:—

- (a) power under section 39 to transfer the decree to another Court, if necessary;
- (b) power under sub-section (1) of section 50 to permit execution to proceed against the legal representatives of a deceased judgment-debtor;
- (c) power under section 152 to correct clerical or arithmetical errors;
- (d) power under rule 16 of Order XXI to recognise the assignment of a decree;
- (e) power under sub-rule (2) of rule 50 of Order XXI to grant leave to a decree-holder to proceed against a person not already recognised as a partner in a firm in an execution proceeding against the firm;
- (f) power under clause (b) of sub-rule (1) of rule 53 of Order XXI to give notice of attachment of decree passed by another Court.

Execution of  
decrees passed  
by British  
Courts in places  
to which this  
part does not  
extend or in  
foreign territory

**43.** Any decree passed by a Civil Court established in any area in Bangladesh to which the provisions relating to execution do not extend, <sup>1</sup>[\* \* \*] may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in Bangladesh.

<sup>1</sup> The words and comma "or by any Court established or continued by the authority of the Central Government in any Acceding State," were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

**44.** [Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.]

<sup>1</sup>[**44A.** (1) Where a certified copy of a decree of any of the superior Courts of <sup>2</sup>[\* \* \*] any reciprocating territory has been filed in a District Court, the decree may be executed in Bangladesh as if it had been passed by the District Court.

Execution of decrees passed by Courts in the United Kingdom and other reciprocating territory

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.]

<sup>3</sup>[\* \* \*]

**Explanation 2.**— "Reciprocating territory" means <sup>4</sup>[any] country or territory as the Government may, from time to time, by notification in the official Gazette, declare to be reciprocating territory for the purposes of this section; and "Superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

**Explanation 3.**— "Decree", with reference to a superior

<sup>1</sup> Section 44A was inserted by section 2 of the Code of Civil Procedure (Amendment) Act, 1937 (Act No. VIII of 1937).

<sup>2</sup> The words "the United Kingdom or" were omitted by section 4 of the Code of Civil Procedure (Third Amendment), 2003 (Act No. XL of 2003).

<sup>3</sup> Explanation 1 was omitted by section 4 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).

<sup>4</sup> The word "any" was substituted, for the words "the United Kingdom and such other" by section 4 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).

Court, means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, and

<sup>1</sup>[\* \* \*]

(b) in no case includes an arbitration award, even if such award is enforceable as a decree or judgment.]

**45.** [Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.]

Precepts

**46.** (1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

**47.** [Omitted by the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).]

#### *Limit of Time for Execution*

Execution  
barred in  
certain cases

**48.** (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

<sup>1</sup> Clause (a) of explanation 3 was omitted by section 4 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).



- (a) the date of the decree sought to be executed, or,
  - (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.
- (2) Nothing in this section shall be deemed—
- (a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application; or
  - (b) to limit or otherwise affect the operation of article 183 of the First Schedule to the Limitation Act, 1908.

*Transferees and Legal Representatives*

**49.** Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder. Transferee

**50.** (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased. Legal representative

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

*Procedure in Execution*

Powers of  
Court to  
enforce  
execution

**51.** Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property;
- (c) by arrest and detention in prison;
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—
  - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
  - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property; or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

**Explanation.**—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

**52.** (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

Enforcement of decree against legal representative

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

**53.** For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

Liability of ancestral property

**54.** Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

Partition of estate or separation of share

#### *Arrest and Detention*

**55.** (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Arrest and detention

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgement-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The Government may, by notification in the official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he may be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding

upon the application or upon the decree in execution of which he was arrested, the Court may release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

**56.** Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

Prohibition of arrest or detention of women in execution of decree for money

**57.** The Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Subsistence allowance

**58.** (1) Every person detained in the civil prison in execution of a decree shall be so detained,-

Detention and release

- (a) where the decree is for the payment of a sum of money exceeding fifty Taka, for a period of six months, and,
- (b) in any other case for a period of six weeks:

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be,-

- (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or
- (ii) on the decree against him being otherwise fully satisfied, or
- (iii) on the request of the person on whose application he has been so detained, or
- (iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

Release on  
ground of  
illness

**59.** (1) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom-

- (a) by the Government, on the ground of the existence of any infectious or contagious disease, or
- (b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

#### *Attachment*

Property  
liable to  
attachment  
and sale in  
execution of  
decree

**60.** (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;
- (b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;
- (d) books of account;
- (e) a mere right to sue for damages;
- (f) any right of personal service;
- (g) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the official Gazette by the Government or the Government in this behalf, and political pensions;
- (h) the wages of labourers and domestic servants, whether payable in money or in kind;
- (i) salary to the extent of the first hundred Taka and one-half the remainder:

Provided that where such salary is the salary of a Servant of the <sup>1</sup>[Republic] or a servant of <sup>2</sup>[the Railway] or local authority, and the whole or any part of the portion of such salary liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree;

- (j) the pay and allowances of persons to whom the <sup>3</sup>[Army Act, 1952, Navy Ordinance, 1961, or the Air Force Act, 1953,] applies;
- (k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925, for the time being applies in so far as they are declared by the said Act not to be liable to attachment;
- (l) any allowance forming part of the emoluments of any servant of the <sup>1</sup>[Republic] or of any servant of <sup>2</sup>[the Railway] or local authority which the Government may by notification in the official Gazette declare to be exempt from attachment, and

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<sup>1</sup> 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).

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

<sup>3</sup> The words, commas and figures "Army Act, 1952, Navy Ordinance, 1961, or the Air Force Act, 1953," were substituted, for the words, commas, figures and brackets "Pakistan Army Act, 1952, applies, or of persons other than commissioned officers to whom the Naval Discipline Act as modified by the Pakistan Navy (Discipline) Act, 1934," by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).



any subsistence grant or allowance made to any such servant while under suspension;

- (m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (n) a right to future maintenance;
- (o) any allowance declared by any Bangladesh law to be exempt from liability to attachment or sale in execution of a decree; and,
- (p) where the judgment-debtor is a person liable for the payment of land-revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

**Explanation 1.**—The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable, and in the case of salary other than salary of a servant of the <sup>1</sup>[Republic] or a servant of <sup>2</sup>[the Railway] or local authority the attachable portion thereof is exempt from attachment until it is actually payable.

**Explanation 2.**—In clauses (h) and (i), "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (l), derived by a person from his employment whether on duty or on leave.

<sup>3</sup>[\* \* \*]

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<sup>1</sup> 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).

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

<sup>3</sup> Explanation 3 was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(2) Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.

Partial exemption of agricultural produce

**61.** The Government may, by general or special order published in the official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

Seizure of property in dwelling-house

**62.** (1) No person executing any process under this Code directing or authorising seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

**63.** (1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

Property attached in execution of decrees of several Courts

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

**64.** Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Private alienation of property after attachment to be void

**Explanation.**—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

*Sale*

**65.** Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

Purchaser's title

**66.** (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims.

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly

sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Power for Government to make rules as to sales of land in execution of decrees for payment of money

**67.** (1) The Government may, by notification in the official Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undermined as, in the opinion of the Government, to make it impossible to fix their value.

(2) When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the Government may, by notification in the official Gazette, declare such rules to be in force, or may, by a like notification, modify the same.

Every notification issued in the exercise of the powers conferred by this sub-section shall set out the rules so continued or modified.

*Delegation to Collector of Power to Execute Decrees  
against Immovable Property*

Power to prescribe rules for transferring to Collector execution of certain decrees

**68.** The Government may, declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immovable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immovable property, shall be transferred to the Collector.

Provisions of Third Schedule to apply

**69.** The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section.

**70.** (1) The Government may make rules consistent with the aforesaid provisions— Rules of procedure

- (a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court;
- (b) conferring upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector;
- (c) providing for orders made by the Collector or any gazetted subordinate of the Collector, or orders made on appeal with respect to such orders, being subject to appeal to, and revision by, superior revenue-authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

(2) A power conferred by rules made under sub-section (1) upon the collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exercisable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court. Jurisdiction of Civil Courts barred

**71.** In executing a decree transferred to the Collector under section 68 the Collector and his subordinates shall be deemed to be acting judicially. Collector deemed to be acting judicially

**72.** (1) Where in any local area in which no declaration under section 68 is in force the property attached consists of Where Court may authorise Collector to

stay public  
sale of land

land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorise the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share.

(2) In every such case the provisions of sections 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable.

*Distribution of Assets*

Proceeds of  
execution-sale  
to be rateably  
distributed  
among  
decree-  
holders

**73.** (1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:

Provided as follows:—

- (a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;
- (b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;
- (c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied-

- firstly, in defraying the expenses of the sale;
- secondly, in discharging the amount due under the decree;
- thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any); and
- fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

*Resistance to Execution*

**74.** Where the Court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

Resistance to execution

**PART III**

## INCIDENTAL PROCEEDINGS

*Commissions*

Power of  
Court to issue  
commissions

**75.** Subject to such conditions and limitations as may be prescribed, the Court may issue a commission—

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts; or
- (d) to make a partition.

**76.** [Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.]

Letter of  
request

**77.** In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within Bangladesh.

Commissions  
issued by  
foreign Courts

**78.** Subject to such conditions and limitations as may be prescribed, the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of—

- (a) Courts situate beyond the limits of Bangladesh and established or continued by the authority of Government, or

<sup>1</sup>[\* \* \*]

- (c) Courts of any State or country outside Bangladesh.

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<sup>1</sup> Clause (b) of section 78 was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).



**PART IV**

## SUITS IN PARTICULAR CASES

*Suits by or against the Government or Public Officers in their official capacity*

**79.** In a suit by or against the Government the authority to be named as plaintiff or defendant, as the case may be, <sup>1</sup>[shall be Bangladesh]—

Suits by or  
against the  
Government

<sup>2</sup>[\* \* \*]

**80.** (1) A suit may be instituted against the Government or against a public officer, in respect of any act purporting to be done by such public officer in his official capacity, after the expiration of two months next after notice in writing has been delivered to or left at the office of,—

Notice

<sup>3</sup>[\* \* \*]

(b)(i) in the case of a suit against the Government other than a suit relating to the affairs of <sup>4</sup>[the Railway], a Secretary to <sup>5</sup>[the Government] or the Collector of the District; and

<sup>1</sup> The words "shall be Bangladesh" were substituted, for the words "shall be" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> Clauses (a) and (b) were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> Clause (a) was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>4</sup> The words "the Railway" were substituted, for the words "a railway" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>5</sup> The words "the Government" were substituted, for the words "that Government" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

- (ii) in the case of a suit against the Government relating to the affairs of <sup>1</sup>[the Railway], the General Manager of the Railway <sup>2</sup>[\* \* \*],

and in the case of a public officer, delivered to him or left at his office stating the cause of action, the name, description of place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Where any such suit is instituted without delivering or leaving such notice as aforesaid or before the expiration of the said period of two months or where the plaint does not contain a statement that such notice has been so delivered or left, the plaintiff shall not be entitled to any costs if settlement as regards the subject-matter of the suit is reached or the Government or the public officer concedes the plaintiff's claim, within the period of two months from the date of the institution of the suit:

Provided that in a suit instituted without such notice, the Court shall allow not less than three months to the Government to submit its written statement.

Exemption  
from arrest  
and personal  
appearance

**81.** In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity—

- (a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,
- (b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

<sup>1</sup> The words "the Railway" were substituted, for the words "a railway" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The word "concerned" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

**82.** (1) Where the decree is against the Government or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Government.

Execution of  
decree

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

*Suits by Aliens and by or against foreign Rulers, Ambassadors  
and Envoys*

**83.** (1) Alien enemies residing in Bangladesh with the permission of the Government, and alien friends, may sue in the Courts in <sup>1</sup>[Bangladesh], as if they were citizens of <sup>1</sup>[Bangladesh].

When aliens  
may sue

(2) No alien enemy residing in Bangladesh without such permission, or residing in a foreign country, shall sue in any of such Courts.

**Explanation.**—Every person residing in a foreign country the Government of which is at war with, or engaged in military operations against, Bangladesh, and carrying on business in that country without a license in that behalf under the hand of a Secretary to the Government shall, for the purpose of subsection (2), be deemed to be an alien enemy residing in a foreign country.

**84.** (1) A foreign State may sue in any Court in <sup>1</sup>[Bangladesh]:

When foreign  
States may sue

Provided that such State has been recognized by the Government:

Provided, also, that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity.

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

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by the Government.

Persons specially appointed by Government to prosecute or defend for Rules of foreign State

**85.** (1) Persons specially appointed by order of the Government at the request of the Ruler of any foreign State, or at the request of any person competent, in the opinion of the Government, to act on behalf of such Ruler, to prosecute or defend any suit on his behalf, 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 such Ruler.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Ruler.

(3) A person appointed under this section may authorise or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

Suits against Rulers

<sup>1</sup>**86.** (1) Any Ruler of foreign State may, with the consent of the Government, certified by the signature of a Secretary to that Government but not without such consent, be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Ruler may be sued; but it shall not be given unless it appears to the consenting authority that the Ruler—

- (a) has instituted a suit in the Court against the person desiring to sue him, or
- (b) by himself or another trades within the local limits of the jurisdiction of the Court, or

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<sup>1</sup> Sections 86 and 86A were substituted, for the original section 86 by section 2 of the Code of Civil Procedure (Amendment) Ordinance, 1970 (Ordinance No. VI of 1970).

- (c) is in possession of immovable property situated within those limits and is to be sued with reference to such property or for money charged thereon.

(3) No such Ruler shall be arrested under this Code, and, except with the consent of the Government certified as aforesaid, on decree shall be executed against the property of any such Ruler.

(4) [*Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.*]

(5) A person may, as a tenant of immovable property, sue, without such consent as is mentioned in this section, a Ruler from whom he holds or claims to hold the property.

**86A.** (1) No proceeding in any Court shall lie against a diplomatic agent except in a case relating to-

Suits against  
diplomatic  
agents

- (a) any private immovable property situated in Bangladesh held by him in his private capacity and not on behalf of the sending State for the purpose of the mission;
- (b) a succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) any professional or commercial activity exercised by the diplomatic agent in Bangladesh outside his official functions.

(2) No measures of execution shall be taken in respect of a diplomatic agent except in cases which come under clauses (a), (b) and (c) of sub-section (1) and in which such measures can be taken without infringing the inviolability of his person or of his residence.

(3) The initiation of any proceedings in a Court by a diplomatic agent shall preclude him from invoking immunity from jurisdiction under this section in respect of any counter-claim directly connected with the principal claim.

(4) The immunity of a diplomatic agent under sub-section (1) or sub-section (2) may be waived by the sending State; and any such waiver shall be express.

(5) Waiver of immunity in respect of any proceedings shall not be held to imply waiver of immunity in respect of any measure of execution for which a separate waiver shall be necessary.

(6) In this section, 'diplomatic agent' in relation to a State means the head of the mission in Bangladesh of that State and includes a member of the staff of that mission having diplomatic rank.]

Style of  
Rulers as  
parties to suits

**87.** The Ruler of a foreign State may sue, and shall be sued, in the name of his State:

Provided that in giving the consent referred to in the foregoing section the Government, or the Government, as the case may be, may direct that any such Ruler shall be sued in the name of an agent or in any other name.

<sup>1</sup>[*Suits Against Rulers of Acceding and Merged States*

**87A.** [Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule).]]

#### *Interpleader*

Where  
interpleader  
suit may be  
instituted

**88.** Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself:

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

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<sup>1</sup> The heading and section 87A were inserted by the Code of Civil Procedure (Amendment) Ordinance, 1960 (Ordinance No. XXII of 1960).

**PART V**

## SPECIAL PROCEEDINGS

<sup>1</sup>[ALTERNATIVE DISPUTE RESOLUTION]

**89.** [Omitted by the Arbitration Act, 1940 (Act No. X of 1940), section 49 and Third Schedule.]

<sup>2</sup>**89A.** (1) Except in a suit under the <sup>3</sup>[Artha Rin Adalat Mediation Ain, 2003 (Act No. 8 of 2003)], after filing of written statement, if all the contesting parties are in attendance in the Court in person or by their respective pleaders, <sup>4</sup>[the Court shall], by adjourning the hearing, mediate in order to settle the dispute or disputes in the suit, or refer the dispute or disputes in the suit to the engaged pleaders of the parties, or to the party or parties, where no pleader or pleaders have been engaged, or to a mediator from the panel as may be prepared by the District Judge under sub-section (10), for undertaking efforts for settlement through mediation<sup>5</sup>].

\*\*\*]

(2) When the reference under sub-section (1) is made through the pleaders, the pleaders shall, by their mutual agreement in consultation with their respective clients, appoint another pleader, not engaged by the parties in the suit, or a retired judge, or a mediator from the panel as may be prepared by the District Judge under sub-section (10), or any other person whom they may seem to be suitable, to act as a mediator for settlement:

Provided that, nothing in this sub-section shall be deemed to prohibit appointment of more than one person to act as mediator:

<sup>1</sup> The words "ALTERNATIVE DISPUTE RESOLUTION" were substituted, for the word "ARBITRATION" by section 2 of the Code of Civil Procedure (Amendment) Act, 2003 (Act No. IV of 2003).

<sup>2</sup> Sections 89A and 89B were inserted by section 3 of the Code of Civil Procedure (Amendment) Act, 2003 (Act No. IV of 2003). [w.e.f 17.01.2016 by SRO No.10-law/2016 dated-14.01.16]

<sup>3</sup> The words, comma, figures and bracket "Artha Rin Adalat Ain, 2003 (Act No. 8 of 2003)" were substituted for the words, comma, figures and bracket "Artha Rin Adalat Ain, 1990 (Act No. 4 of 1990)" by section 2(a)(i) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

<sup>4</sup> The words "the Court shall" were substituted for the words "the Court may" by section 2(a)(ii) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

<sup>5</sup> The full-stop (.) was substituted for the colon (: ) and thereafter the proviso was omitted by section 2(a)(iii) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

Provided further that, a person holding an office of profit in the service of the Republic shall not be eligible for appointment as mediator.

<sup>1</sup>[(3) While referring a dispute or disputes in the suit for mediation under sub-section (1), it shall be for the pleaders, their respective clients and the mediator to mutually agree on and determine the fees and the procedure to be followed for the purpose of settlement through mediation; and when the Court shall mediate, it shall determine the procedure to be followed, and shall not charge any fee for mediation:]

Provided that if the pleaders, their respective clients and the mediator fail to determine the fees, the Court shall fix the fees and the fees so fixed shall be binding upon the parties.]

<sup>2</sup>[(4) Within ten days from the date of reference under sub-section (1), the parties shall inform the Court in writing whom they have appointed as mediator, and if the parties fail to appoint the mediator during this time, the Court shall, within seven days, appoint a mediator from the panel as mentioned in sub-section (10) and the mediation under this section shall be concluded within 60 (sixty) days from the day on which the Court is so informed, or a mediator is appointed by the Court, as the case may be, unless the Court of its own motion or upon a joint prayer of the parties, extends the time for a further period of not exceeding 30 (thirty) days.]

<sup>3</sup>[(5) The mediator shall, without violating the confidentiality of the parties to the mediation proceedings, submit to the court a report of result of the mediation proceedings; and if the result is of compromise of the dispute or disputes in the suit, the terms of such compromise shall be reduced into writing in the form of an agreement, bearing signatures or left thumb impressions of the parties as executants, and signatures of the pleaders, if any, and the mediator as witnesses; and the Court shall, within seven days from receiving the said report, pass an order or a decree in accordance with relevant provisions of Order XXIII of the Code.]

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<sup>1</sup> Sub-section (3) was substituted by section 2(b) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

<sup>2</sup> Sub-section (4) was substituted by section 2(c) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

<sup>3</sup> Sub-section (5) was substituted by section 2(d) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).



(6) When the Court itself mediates, it shall <sup>1</sup>[prepare a report and pass an order in the manner] to that as stated in sub-section (5).

(7) When the mediation fails to produce any compromise, the Court shall, subject to the provision of sub-section (9), proceed with hearing of the suit from the stage at which the suit stood before the decision to mediate or reference for mediation under sub-section (1), and in accordance with provisions of the Code in a manner as if there had been no decision to mediate or reference for mediation as aforesaid.

(8) The proceedings of mediation under this section shall be confidential and any communication made, evidence adduced, admission, statement or comment made and conversation held between the parties, their pleaders, representatives and the mediator, shall be deemed privileged and shall not be referred to and admissible in evidence in any subsequent hearing of the same suit or any other proceeding.

(9) When a mediation initiative led by the Court itself fails to resolve the dispute or disputes in the suit, the same court shall not hear the suit, if the Court continues to be presided by the same judge who led the mediation initiative; and in that instance, the suit shall be heard by another court of competent jurisdiction.

(10) For the purposes of this section, the District Judge shall, in consultation with the President of the District Bar Association, prepare a panel of mediators (to be updated from time to time) consisting of pleaders, retired judges, persons known to be trained in the art of dispute resolution, and such other person or persons, except persons holding office of profit in the service of the Republic, as may be deemed appropriate for the purpose, and shall inform all the Civil Courts under his administrative jurisdiction about the panel:

Provided that, a mediator under this sub-section, shall not act as a mediator between the parties, if he had ever been engaged by either of the parties as a pleader in any suit in any Court.

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<sup>1</sup> The words “prepare a report and pass an order in the manner” were substituted for the words “make a report and passed order in a manner similar” by section 2(e) of The Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

(11) Notwithstanding anything contained in the Court-fees Act, 1870 (Act No. VII of 1870), where a dispute or disputes in a suit are settled on compromise under this section, the Court shall issue a certificate directing refund of the court fees paid by the parties in respect of the plaint or written statement; and the parties shall be entitled to such refund within 60 (sixty) days of the issuance of the certificate.

(12) No appeal or revision shall lie against any order or decree passed by the Court in pursuance of settlement between the parties under this section.

(13) Nothing in this section shall be deemed to otherwise limit the option of the parties regarding withdrawal, adjustment and compromise of the suit under Order XXIII of the Code.

**Explanation**—(1) "Mediation" under this section shall mean flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution process in which the mediator shall facilitate compromise of disputes in the suit between the parties without directing or dictating the terms of such compromise.

(2) "Compromise" under this section shall include also compromise in part of the disputes in the suit.

#### Arbitration

**89B.** (1) If the parties to a suit, at any stage of the proceeding, apply to the Court for withdrawal of the suit on ground that they will refer the dispute or disputes in the suit to arbitration for settlement, the Court shall allow the application and permit the suit to be withdrawn; and the dispute or disputes, thereafter, shall be settled in accordance with Salish Ain, 2001 (Act No. 1 of 2001) so far as may be applicable:

Provided that, if, for any reason, the arbitration proceeding referred to above does not take place or an arbitral award is not given, the parties shall be entitled to re-institute the suit permitted to be withdrawn under this sub-section.

(2) An application under sub-section (1) shall be deemed to be an arbitration agreement under section 9 of the Salish Ain, 2001 (Act No. 1 of 2001).]

<sup>1</sup>[**89C.** (1) An Appellate Court <sup>2</sup>[shall] mediate in an appeal or refer the appeal for mediation in order to settle the dispute or disputes in that appeal, if the appeal is an appeal from original decree under Order XLI, and is between the same parties who contested in the original suit or the parties who have been substituted for the original contesting parties.

Mediation in Appeal

<sup>3</sup>[(2) In mediation under sub-section (1), the provisions of section 89A shall be followed with necessary changes (mutatis mutandis) as may be expedient.]]

<sup>4</sup>[**89D.** The Contesting parties to a suit or of an appeal, pending in any Court before the commencement of the Code of Civil Procedure (Amendment) Act, 2012, may by filing an application stating their willingness to settle the dispute through mediation, such suit or appeal shall be disposed of in accordance with the provision of section 89A or 89C.

Special provisions for mediation

**89E.** (1) The provision of section 89A or 89C shall be, applied to such area, and commenced on such date, as the government may, by notification in the official Gazette, fix.

Application and commencement of the provisions of sections 89A and 89C

(2) Where any mediation process for settlement of dispute in respect of any suit or appeal is pending under section 89A or 89C before the commencement of the Code of Civil Procedure (Amendment) Act, 2012, such mediation shall continue as if the provision of section 89A or 89C were not amended by the Code of Civil Procedure (Amendment) Act, 2012.]

*Special Case*

**90.** Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

Power to state case for opinion of Court

*Suits relating to Public Matters*

**91.** (1) In the case of a public nuisance the <sup>5</sup>[Attorney General], or two or more persons having obtained the consent in writing of the <sup>5</sup>[Attorney General], may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

Public nuisances

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

<sup>1</sup> Section 89C was inserted by section 2 of the Code of Civil Procedure (Amendment) Act, 2006 (Act No. VIII of 2006). [w.e.f 17.01.2016 by SRO No. 10- law/2016,dated-14.01.2016]

<sup>2</sup> The word "shall" was substituted for the word "may" by section 3(a) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

<sup>3</sup> Sub-section (2) was substituted by section 3(b) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

<sup>4</sup> Section 89D and 89E were inserted by section 4 of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

<sup>5</sup> The words "Attorney General" were substituted, for the words "Advocate General" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Public  
charities

**92.** (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the <sup>1</sup>[Attorney General], or two or more persons having an interest in the trust and having obtained the consent in writing of the <sup>1</sup>[Attorney General], may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863), no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

Exercise of  
powers of  
Attorney  
General

**93.** The powers conferred by sections 91 and 92 on the <sup>1</sup>[Attorney General] may, be, with the previous sanction of the Government, exercised also by the Collector or by such officer as the Government may appoint in this behalf.

## PART VI

### SUPPLEMENTAL PROCEEDINGS

Supplemental  
proceedings

**94.** In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

- (a) issue a warrant to arrest the defendant and bring him

<sup>1</sup> The words "Attorney General" were substituted, for the words "Advocate General" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient.

**95. (1)** Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last proceeding section,—

- (a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or
- (b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same,

Compensation for obtaining arrest, attachment or injunction on insufficient grounds

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding <sup>1</sup>[ten thousand] Taka, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

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<sup>1</sup> The words "ten thousand" were substituted, for the words "one thousand" by section 5 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).

**PART VII**

## APPEALS

*Appeals From Original Decrees*

Appeal from  
original  
decree

**96.** (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

Appeal from  
final decree  
where no  
appeal from  
preliminary  
decree

**97.** Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

Decision  
where appeal  
heard by two  
or more  
Judges

**98.** (1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the letters patent of High Court Division.

**99.** No decree shall be reserved or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction

#### *Appeals from Appellate Decrees*

**100-103.** [Omitted by the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978), section 2 and Schedule.]

#### *Appeals from Orders*

**104.** (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:—

Orders from which appeal lies

<sup>1</sup>[\* \* \*]

<sup>2</sup>[(ff) an order under section 35A;]

(g) an order under section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules:

Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.

<sup>1</sup> Clauses (a) to (f) were omitted by section 49 and 3rd Schedule of the Arbitration Act, 1940 (Act No. X of 1940).

<sup>2</sup> Clause (ff) was inserted by section 3 of the Code of Civil Procedure (Amendment) Act, 1922 (Act No. IX of 1922).

(2) No appeal shall lie from any order passed in appeal under this section.

Other orders

**105.** (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

What Courts to hear appeals

**106.** Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court not being the High Court Division in the exercise of appellate jurisdiction, then to the High Court Division.

*General Provisions relating to Appeals*

Powers of Appellate Court

**107.** (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.



**108.** The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals-

Procedure in appeals from appellate decrees and orders

- (a) from appellate decrees, and
- (b) from orders made under this Code or under any special <sup>1</sup>[\* \* \*] law in which a different procedure is not provided.

<sup>2</sup>[*Appeals to the Appellate Division*]

**109.** Subject to such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of Bangladesh, and to the provisions hereinafter contained, an appeal shall lie to the <sup>3</sup>[Appellate Division]-

When appeals lie to the Supreme Court

- (a) from any Judgment, decree or final order passed on appeal by the High Court Division or by any other Court of final appellate jurisdiction;
- (b) from any Judgment, decree or final order passed by the High Court Division in the exercise of original civil jurisdiction; and
- (c) from any Judgment, decree or final order, when the case, as hereinafter provided, is certified to be a fit one for appeal to the <sup>3</sup>[Appellate Division].

**110.** In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject-matter

Value of subject-matter

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<sup>1</sup> The words "or local" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The Heading "*Appeals to the Appellate Division*" was substituted, for the former Heading "*Appeals to the Supreme Court*" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> 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 suit in the Court of first instance must be twenty thousand Taka or upwards, and the amount or value of the subject-matter in dispute on appeal to the <sup>1</sup>[Appellate Division] must be the same sum or upwards,

or the Judgment, decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

and where the Judgment, decree or final order appealed from affirms the decision of the Court immediately below the Court passing such Judgment, decree or final order, the appeal must involve some substantial question of law.

Bar of certain  
appeals

**111.** Notwithstanding anything contained in section 109, no appeal shall lie to the <sup>1</sup>[Appellate Division]-

- (a) from the decree or order of one Judge of the High Court Division, or of one Judge of a Division Court, or of two or more Judges of High Court Division, or of a Division Court constituted by two or more Judges of High Court Division, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court Division at the time being; or

<sup>2</sup>[\* \* \*]

**111A.** [Omitted by the Federal Court Act, 1941 (Act No. XXI of 1941), section 2.]

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<sup>1</sup> 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).

<sup>2</sup> Clause (b) was omitted by Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

**112.** (1) Nothing contained in this Code shall be deemed— Savings

- (a) to affect the powers of the <sup>1</sup>[Appellate Division under article 103 of the Constitution of the People's Republic of Bangladesh] or any other provision of that Constitution; or
- (b) to interfere with any rules made by the Supreme Court, and for the time being in force, for the presentation of appeals <sup>2</sup>[to the Appellate Division], or their conduct <sup>3</sup>[before that Division].

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

### PART VIII

#### REFERENCE, REVIEW AND REVISION

**113.** Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court Division, and the High Court Division may make such order thereon as it thinks fit. Reference to High Court Division

**114.** Subject as aforesaid, any person considering himself aggrieved— Review

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

<sup>1</sup> The words and figure "Appellate Division under article 103 of the Constitution of the People's Republic of Bangladesh" were substituted, for the words and figure "Supreme Court under Article 158 of the Constitution" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The words "to the Appellate Division" were substituted, for the words "to that Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> The words "before that Division" were substituted, for the words "before that Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

- (b) by a decree or order from which no appeal is allowed by this Code, or
- (c) by a decision on a reference from a Court of Small Causes,

may apply for a view of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

Revision

<sup>1</sup>[115. (1) The High Court Division may, on the application of any party aggrieved, call for the record of any suit or proceedings, in which a decree or an order has been passed by a Court of District Judge or Additional District Judge, or a decree has been passed by a Court of Joint District Judge, Senior Assistant Judge or Assistant Judge, from which no appeal lies; and if such Court appears to have committed any error of law resulting in an error in such decree or order occasioning failure of justice, the High Court Division may, revise such decree or order and, make such order in the suit or proceedings, as it thinks fit.

(2) The Court of District Judge may, on the application of any party aggrieved, call for the record of any suit or proceeding, in which an order has been passed by a Court of Joint District Judge, Senior Assistant Judge or Assistant Judge, from which no appeals lies; and if such Court appears to have committed any error of law resulting in an error in such order occasioning failure of justice, the Court of District Judge may, revise such order and, make such order as it thinks fit.

(3) A Court of Additional District Judge shall have all the powers of the District Judge under sub-section (2) in respect of revision case which may be transferred to it by the District Judge.

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<sup>1</sup> Section 115 was substituted, for section 115 by section 6 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).

(4) An application to the High Court Division for revision of an order of the District Judge or, Additional District Judge, as the case may be, made under sub-section (2) or (3) shall lie, where the High Court Division grants leave for revision on an error of an important question of law resulting in erroneous decision occasioning failure of justice, and the High Court Division may make such order in the suit or proceeding as it thinks fit.

(5) Notwithstanding the substitution of this section, any proceeding commenced and pending under section 115 prior to such substitution shall be disposed of in such manner as if section 115 has not been substituted.]

**PART IX**

SPECIAL PROVISIONS RELATING TO HIGH COURT DIVISION

**116.** This Part applies only to High Court Division.

Part to apply only to certain High Court Division

**117.** Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to High Court Division.

Application of Code to High Court Division

**118.** Where any High Court Division considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;

Execution of decree before ascertainment of costs

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

**119.** Nothing in this Code shall be deemed to authorise any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise

Unauthorised persons not to address Court

of the power conferred by its charter authorised him so to do, or to interfere with the power of the High Court Division to make rules concerning advocates <sup>1</sup>[\* \*\*].

Provisions not applicable to High Court Division in original civil jurisdiction

**120.** (1) The following provisions shall not apply to the High Court Division in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

## PART X

### RULES

Effect of rules in First Schedule

**121.** The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

Power of Supreme Court to make rules

<sup>2</sup>[**122.** The Supreme Court may, from time to time after previous publication, make rules regulating the procedure of each Division of the Supreme Court and the procedure of Civil Courts subject to its Superintendence and may by such rules annul, alter or add to all or any of the rules in the First Schedule.]

Constitution of Rule Committees

**123.** (1) A Committee, to be called the Rule Committee, shall be constituted <sup>3</sup>[for the purpose] referred to in section 122.

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<sup>1</sup> The comma and words ", vakils and attorneys" were omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.

<sup>2</sup> Section 122 was substituted, for the original section 122 by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> The words "for the purpose" were substituted, for the words "at the town which is the usual place of siting of each of the High Courts" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>1</sup>[(2) Such Committee shall consist of the following persons, namely:—

- (a) three Judges of the Supreme Court, one of whom at least has served as a District Judge for three years;
- (b) two advocates practising in that Court; and
- (c) a Judge of a Civil Court subordinate to the High Court Division.]

(3) The members of <sup>2</sup>[\* \* \*] such Committee shall be appointed by the Chief Justice, who shall also nominate one of their number to be president:

Provided that, if the Chief Justice elects to be himself a member of <sup>3</sup>[the Committee], the number of other Judges appointed to be members shall be two, and the Chief Justice shall be the President of the Committee.

(4) Each member of <sup>4</sup>[such committee] shall hold office for such period as may be prescribed by the Chief Justice in this behalf; and whenever any member retires, resigns, dies <sup>5</sup>[\* \* \*] or becomes incapable of acting as a member of the Committee, the said Chief Justice may appoint another person to be a member in his stead.

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<sup>1</sup> Sub-section (2) was substituted, for the original sub-section (2) by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The word "each" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> The words "the Committee" were substituted, for the words "a Committee" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>4</sup> The words "such Committee" were substituted, for the words "any such Committee" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>5</sup> The words and comma "or ceases to reside in the Province in which the Committee was constituted," were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(5) There shall be a Secretary to <sup>1</sup>[\*\*\*] such Committee, who shall be appointed by the Chief Justice and shall receive such remuneration as may be provided in this behalf by the Government.

Committee to report to Supreme Court

**124.** <sup>2</sup>[The] Rule Committee shall make a report to the <sup>3</sup>[Supreme Court] <sup>4</sup>[\*\*\*] on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and before making any rules under section 122 the <sup>3</sup>[Supreme Court] shall take such report into consideration.

**125.** [*Omitted by the Central Laws (Statute Reform) Ordinance, 1960 (Ordinance No. XXI of 1960), section 3 and 2nd Schedule.*]

Rules to be subject to approval

<sup>5</sup>[**126.** Rules made under the foregoing provisions shall be subject to the previous approval of the President.].

Publication of rules

**127.** Rules so made and approved shall be published in the official Gazette, and shall from the date of publication or from such other date as may be specified have the same force and effect <sup>6</sup>[\* \* \*] as if they had been contained in the First Schedule.

<sup>1</sup> The word "each" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The word "The" was substituted, for the word "Every" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> The words "Supreme Court" were substituted, for the words "High Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>4</sup> The words "established at the town at which it is constituted" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>5</sup> Section 126 was substituted, for section 126 by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>6</sup> The commas and words ", within the local limits of the jurisdiction of the High Court which made them," were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).



**128.** (1) Such rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts. Matters for which rules may provide

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely;—

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;
- (b) the maintenance and custody, while under attachment, of live-stock and other movable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale;
- (c) procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction;
- (d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts;
- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not;
- (f) summary procedure-
  - (i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—
    - on a contract express or implied; or
    - on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or
    - on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only; or
    - on a trust; or

- (ii) in suits for the recovery of immovable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant;
- (g) procedure by way of originating summons;
- (h) consolidation of suits, appeals and other proceedings;
- (i) delegation to any Registrar, Prothonotary or master or other official of the Court of any judicial, quasi-judicial and non-judicial duties; and
- (j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

**129.** [Omitted by the *Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.*]

**130.** [Omitted by the *Central Laws (Adaptation) Order, 1961, Article 2 and Schedule.*]

**131.** [Omitted by the *Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.*]

## PART XI

### MISCELLANEOUS

Exemption of certain women from personal appearance

**132.** (1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

**133.** (1) The Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of <sup>1</sup>[the Government], entitles him to the privilege of exemption.

Exemption of other persons

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court Division by the Government and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court Division shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

**134.** The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

Arrest other than in execution of decree

**135.** (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

Exemption from arrest under civil process

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognised agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

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<sup>1</sup> The words "the Government" were substituted, for the words "such Government" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Exemption of members of legislative bodies from arrest and detention under civil process

<sup>1</sup>[**135A.** (1) No person shall be liable to arrest or detention in prison under civil process—

- (a) if he is a member of <sup>2</sup>[Parliament] during the continuance of any meeting of <sup>3</sup>[Parliament];
- (b) if he is a member of any committee of <sup>3</sup>[Parliament], during the continuance of any meeting of such committee;

and during the fourteen days before and after such meeting or sitting.

(2) A person released from detention under sub-section (1) shall, subject to the provisions of the said sub-section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1).]

Procedure where person to be arrested or property to be attached is outside district

**136.** (1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the

<sup>1</sup> Section 135A was inserted by section 3 of the Legislative Members Exemption Act, 1925 (Act No. XXIII of 1925).

<sup>2</sup> The word "Parliament" was substituted, for the word "a Legislature" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> The word "Parliament" was substituted, for the words "such Legislature" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

**137.** (1) The language which, on the commencement of this Code, is the language of any Court subordinate to the High Court Division shall continue to be the language of such subordinate Court until the Government otherwise directs.

Language of subordinate Courts

(2) The Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

**138.** (1) The High Court Division may, by notification in the official Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

Power of High Court Division to require evidence to be recorded in English

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

**139.** In the case of any affidavit under this Code—

(a) any Court or Magistrate, or

Oath on affidavit by whom to be administered

- (b) any officer or other person whom <sup>1</sup>[the Supreme Court] may appoint in this behalf, or
- (c) any officer appointed by any other Court which the Government has generally or specially empowered in this behalf,

may administer the oath to the deponent.

Assessors in causes of salvage, etc

**140.** (1) In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

Miscellaneous proceedings

**141.** The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Orders and notices to be in writing

**142.** All orders and notices served on or given to any person under the provisions of this Code shall be in writing.

Postage

**143.** Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made:

Provided that the Government may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

Application for restitution

**144.** (1) Where and in so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have

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<sup>1</sup> The words "the Supreme Court" were substituted, for the letter and word "a High Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

**145.** Where any person has become liable as surety—

Enforcement of liability of surety

- (a) for the performance of any decree or any part thereof, or
- (b) for the restitution of any property taken in execution of a decree, or
- (c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceedings consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of section 47:

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

**146.** Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

Proceedings by or against representatives

**147.** In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement.

Consent or agreement by persons under disability

**148.** Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Enlargement of time

Power to make up deficiency of court-fees

**149.** Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

Transfer of business

**150.** Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

Saving of inherent powers of Court

**151.** Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Amendment of judgments, decrees or orders

**152.** Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

General power to amend

**153.** The Court may at any time, and on such terms as to costs or otherwise as it thinks fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

Saving of present right of appeal

**154.** Nothing in this Code shall affect any present right of appeal which shall have accrued to any party at its commencement.

Amendment of certain Acts

**155.** The enactments mentioned in the Fourth Schedule are hereby amended to the extent specified in the fourth column thereof.

**156.** *[Omitted by the Second Repealing and Amending Act, 1914 (Act No. XVII of 1914), section 3 and 2nd Schedule.]*

**157-158.** *[Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.]*



## **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 TO 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 immovable 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 plaintiff.
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.

RULES

13. Service on agent by whom defendant carries on business.
14. Service on agent in charge in suits for immovable property.
15. Where service may be on adult member of defendant's family.
16. Person served to sign acknowledgement.
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 immovable 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.

RULES

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 filed.

**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 its 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 signed.

## 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 immovable property.
10. Decree for delivery of movable 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.

RULES

4. [Omitted]
5. Mode of transfer.
6. Procedure where Court desires that 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 movable property not in judgment-debtor's possession.
13. Application for attachment of immovable 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 movable 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 immovable property.
36. Decree for delivery of immovable 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.

RULES

43. Attachment of movable 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 movables.
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 immovable 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 Movable 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 movable property, debts and shares.
80. Transfer of negotiable instruments and shares.
81. Vesting order in case of other property.

*Sale of Immovable 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 immovable 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 immovable 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. Pains 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 XXVIA**

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 or 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 IMMOVABLE  
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. Plaintiff 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 immovable 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.

RULES

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.



**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.

When plaintiff in doubt from whom redress is to be sought

**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.

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

(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.

**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.

Misjoinder and nonjoinder

**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.

Suit in name of wrong plaintiff

(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.

Court may strike out or add parties

(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 <sup>1</sup>[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.

<sup>1</sup> 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).

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.

Suit to include the whole 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.

Relinquishment of part of claim

(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.

Omission to sue for one of several reliefs

**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.

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.

Joinder of causes of action

(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.

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

Only certain claims to be joined for recovery of immovable property

- (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.

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

- (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.

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. Service of process on recognized agent

(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.

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. Appointment of pleader

(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

1.<sup>1</sup>[(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. Suit to be commenced by plaint

(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 acknowledgement 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.

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. Register of suits

**ORDER V**

## ISSUE AND SERVICE OF SUMMONS

*Issue of Summons*

1.<sup>2</sup>[(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: Summons

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.

<sup>1</sup> 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).

<sup>2</sup> 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*

<sup>1</sup>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 transmission of documents through fax message or electronic mail service by the plaintiff at his own cost.

(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.

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

(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.]

**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.

Mode of service

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

Service on several defendants

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

**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.

Service on agent by whom defendant carries on business

(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 immovable property

**14.** Where in a suit to obtain relief respecting, or compensation for wrong to, immovable 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 <sup>1</sup>[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 <sup>2</sup>[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 acknowledgement

**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 acknowledgement 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 acknowledgement, 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.

<sup>1</sup> The words “adult member” were substituted for the words “male member” in the marginal heading by section 5(c)(i) of The Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

<sup>2</sup> 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

<sup>1</sup>**[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 acknowledgement 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 acknowledgement 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 acknowledgement due, the declaration referred to in this sub-rule may be made notwithstanding the fact that the acknowledgement 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.]

<sup>1</sup> 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.

<sup>1</sup>[(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 <sup>2</sup>[\* \* \*] either by one of its officers or by post <sup>3</sup>[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 return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

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

<sup>2</sup> 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).

<sup>3</sup> 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(e) of the Code of Civil Procedure (Amendment) Act, 2012 (Act No. XXXVI of 2012).

**24.** Where defendant is confined in a prison, the summons shall be delivered or sent by post <sup>1</sup>[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 on defendant in prison

<sup>2</sup>[**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.

Service where defendant resides out of Bangladesh and has no agent

(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 message or electronic mail service by the plaintiff at his own cost.]

**26. Where—**

- (a) in the exercise of any foreign or extra <sup>3</sup>[territorial] jurisdiction vested in the Government, <sup>4</sup>[\* \* \*] 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

Service in foreign territory through Political Agent or Court

<sup>1</sup> 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).

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

<sup>3</sup> 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).

<sup>4</sup> 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 <sup>1</sup>[Bangladesh] shall be deemed to be valid service,

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

and, if the <sup>3</sup>[\* \* \*] Court returns the summons with an endorsement signed by <sup>4</sup>[\* \* \*] 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 <sup>5</sup>[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.

<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> 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).



**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.

Service on soldiers, sailors or airmen

**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 acknowledgement of the defendant, and such signature shall be deemed to be evidence of service.

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

**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.

Substitution of letter for summons

(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.

<sup>1</sup>**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.]

Service of summons when completed

## ORDER VI

### PLEADINGS GENERALLY

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

Pleading

**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.

Pleading to state material facts and not evidence

<sup>1</sup> 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.

**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.

Notice

**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.

Implied contract, or relation

**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).

Presumptions of law

**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.

Pleading to be signed

**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.

Verification of pleadings

(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<sup>1</sup>:

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;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence 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;
- (e) the facts constituting the cause of action and when it arose;

<sup>1</sup> 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).

- (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.

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

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 plaintiff shall state approximately the amount sued for.

**3.** Where the subject-matter of the suit is immovable property, the plaintiff 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 plaintiff shall specify such boundaries or numbers. Where the subject-matter of the suit is immovable property

**4.** Where the plaintiff sues in a representative character the plaintiff 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. When plaintiff sues as representative

**5.** The plaintiff 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. Defendant's interest and liability to be shown

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

**7.** Every plaintiff 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 to be specifically stated

**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. Relief founded on separate grounds



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.]

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

Procedure on rejecting 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.

Where rejection of plaint does not preclude presentation of fresh plaint

*Documents Relied on in Plaint*

<sup>1</sup>[**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.

Production of documents along 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.]

**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.

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

**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.

Suits on lost negotiable instruments

<sup>1</sup> 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 <sup>1</sup>]:

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

<sup>2</sup>[**1.** <sup>3</sup>(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:

<sup>1</sup> 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).

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

<sup>3</sup> 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.]

**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. New facts must be specially pleaded

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.

**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.

Defence or set-off founded on separate grounds

**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.

New ground of defence

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.

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 <sup>2</sup>[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.

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.

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

Procedure when only plaintiff appears  
When summons duly served  
When summons not duly served  
When summons served, but not in due time

<sup>1</sup> 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).

<sup>1</sup> 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

<sup>1</sup>**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

<sup>1</sup> 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.]

**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 plaintiffs

**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.

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

**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.

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

#### *Setting aside Decrees Ex Parte*

**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

Setting aside decree *ex parte* against defendant

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.

(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

<sup>1</sup>[**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

<sup>2</sup>[**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.]

<sup>1</sup> Rule 13A was inserted by section 3 of the Code of Civil Procedure (Amendment) Act, 2006 (Act No. VIII of 2006).

<sup>2</sup> 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

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.

Ascertainment whether allegations in pleadings are admitted or denied

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.

Oral examination of party or companion of party

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

Substance of examination to be written

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.

Consequence of refusal or inability of pleader to answer

(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 <sup>1</sup>[, 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 <sup>2</sup>[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.

<sup>1</sup> 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).

<sup>2</sup> 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).

- 4.** Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require. Form of interrogatories
- 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. Corporations
- 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. Objections to interrogatories by answer
- 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. Setting aside and striking out interrogatories
- 8.** Interrogatories shall be answered by affidavit to be filed within ten days<sup>1</sup>[\* \* \*]. Affidavit in answer, filing
- 9.** An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require. Form of affidavit in answer
- 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. No exception to be taken
- 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. Order to answer or answer further

<sup>1</sup> 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 satisfied 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.

**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.

Notice to produce

**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 N0. 8 in Appendix C, with such variations as circumstances may require.

Time for inspection when notice given

**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.

Order for inspection

(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

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 part 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 <sup>1</sup>[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

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<sup>1</sup> 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.

**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.

Court may order any document to be impounded

**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,-

Return of admitted documents

- (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.

**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.

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

(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 <sup>1</sup>]:

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.

<sup>1</sup> 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.** 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.

Issues of law  
and of fact

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

Materials from  
which issues  
may be framed

- (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.

**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 <sup>1</sup>[ 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.

Court may  
examine  
witness or  
documents  
before framing  
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.

Power to  
amend, and  
strike out,  
issues

(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.

**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,—

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

- (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

<sup>1</sup> 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

<sup>1</sup>**[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.

<sup>1</sup> Rule 8 was added by section 5 of the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1983).

**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: Parties at issue

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.

**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. Failure to produce evidence

**ORDER XVI**

SUMMONING AND ATTENDANCE OF WITNESSES

**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. Summons to attend to give evidence or produce documents

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

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	<b>3.</b> 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	<b>4.</b> (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 movable 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	<b>5.</b> 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.



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.

Summons to 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.

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

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.

Summons how served

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.

Time for serving 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.

Procedure where witness fails to comply with 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 immovable 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—

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

- (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.

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.

<sup>1</sup>(3) Notwithstanding anything contained in sub-rules (1) and (2), the Court shall not grant more than six 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

<sup>1</sup> 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).

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.]

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

Procedure if  
Parties fail to

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.

**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. Witnesses to be examined in open Court

**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. How evidence shall be taken in appealable cases

**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. When deposition to be interpreted

**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. Evidence under section 138

**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. Memorandum when evidence not taken down by Judge

**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. When evidence may be taken in English

**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. Any particular question and answer may be taken down

**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. Questions objected to and allowed by Court

Remarks on demeanour of witnesses	<p><b>12.</b> The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.</p>
Memorandum of evidence in unappealable cases	<p><b>13.</b> 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.</p>
Judge unable to make such memorandum to record reasons of his inability	<p><b>14.</b> (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.</p> <p>(2) Every memorandum so made shall form part of the record.</p>
Power to deal with evidence taken before another Judge	<p><b>15.</b> (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.</p> <p>(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.</p>
Power to examine witness immediately	<p><b>16.</b> (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.</p> <p>(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.</p>



(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.

**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.

Court may recall 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

<sup>1</sup>[**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.]

<sup>2</sup>[**20.**Court shall not fix, more than five suits, including two part-heard suits, in the daily cause list for peremptory hearing, and more than one hundred suits in the peremptory stage; and when upon disposal, the total number of suits in the peremptory stage comes down to less than seventy, 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.]

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

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

**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, <sup>1</sup>[not beyond seven days,] of which due notice shall be given to the parties or their pleaders.

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<sup>1</sup> 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).

- 2.** A Judge may pronounce a judgment written but not pronounced by his predecessor. Power to pronounce Judgment written by Judge's predecessor
- 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. Judgment to be signed
- 4.** (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon. Judgments of Small Cause 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. Judgments of other Courts
- 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 <sup>1</sup>[\* \* \*]. Court to state its decision on each issue
- <sup>2</sup>[**5A.** The decree shall be drawn up within seven days from the date of pronouncement of the judgment.] Time for drawn up a 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. Contents of decree
- (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.

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<sup>1</sup> 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).

<sup>2</sup> 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 immovable property                    **9.** Where the subject-matter of the suit is immovable 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 movable property                    **10.** Where the suit is for movable 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.

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

Decree for possession and mesne profits

- (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.

**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.

Decree in administration suit

(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.

**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.

Decree in suit for account between principal and agent

**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.

Special directions as to accounts

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

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

- (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 <sup>1</sup>[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 immovable property or to movable 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.

<sup>1</sup> 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*

**3.** Where immovable 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. Lands situate in more than one jurisdiction

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

**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. Mode of transfer

**6.** The Court sending a decree for execution shall send— Procedure where Court desires that its own decree shall be executed by another Court

- (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.

**12.** Where an application is made for the attachment of any movable 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 movable property not in judgment-debtor's possession

Application for attachment of immovable property to contain certain particulars

**13.** Where an application is made for the attachment of any immovable 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.

**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.

Procedure on receiving application for execution of decree

(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.

**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—

Execution in case of cross decrees

(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.

**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—

Execution in case of cross-claims under same decree

- (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.

**20.** The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

Cross-decrees and cross-claims in mortgage-suits

**21.** The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

Simultaneous execution

**22.** (1) Where an application for execution is made—

Notice to show cause against execution in certain cases

- (a) more than <sup>1</sup>[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 <sup>1</sup>[two years] having elapsed between the date of the decree and the application for execution if the application is made within <sup>1</sup>[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.

<sup>1</sup> 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.

<sup>1</sup>[(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.

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<sup>1</sup> 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*

**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.

When Court  
may stay  
execution

(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.

(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.

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

**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.

Liability of  
judgment-  
debtor  
discharged

**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.

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

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.

Decree for specific movable property

**31.** (1) Where the decree is for any specific movable, or for any share in a specific movable, 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 movable 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.

**35.** (1) Where a decree is for the delivery of any immovable 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.

Decree for immovable property

(2) Where a decree is for the joint possession of immovable 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.

**36.** Where a decree is for the delivery of any immovable 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.

Decree for delivery of immovable property when in occupancy of tenant

*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.

Subsistence  
allowance

**39.** (1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

**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.

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

(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 movable property other than agricultural produce, in possession of judgment-debtor

**43.** Where the property to be attached is movable 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.

**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.

Provisions as to agricultural produce under attachment

(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 movable 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 movable 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 movables

**47.** Where the property to be attached consists of the share or interest of the judgment-debtor in movable 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.

**48.** (1) Where the property to be attached is the salary or allowances of a servant of the <sup>1</sup>[Republic] or of a servant of <sup>2</sup>[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,—

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

- (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.

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<sup>1</sup> 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).

<sup>2</sup> 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 <sup>1</sup>[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 <sup>1</sup>[the railway] or local authority in Bangladesh; and the Government or the <sup>2</sup>[the railway] or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

<sup>3</sup>[\* \* \*]

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.

<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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.

**50.** (1) Where a decree has been passed against a firm, execution may be granted-

Execution of  
decree against  
firm

- (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.

**54.** (1) Where the property is immovable, 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.

Attachment of immovable property

(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 immovable 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.

(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.

Postponement  
of sale

**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.

Evidence to be  
adduced by  
claimant

**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.

Release of  
property from  
attachment

**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.

Disallowance  
of claim to  
property  
attached

**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.

Continuance  
of attachment  
subject to  
claim of  
incumbrancer

**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.

**67.** (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

Mode of  
making  
proclamation

(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.

**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 immovable property, and of at least fifteen days in the case of movable 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.

Time 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:

Adjournment  
or stoppage  
of sale

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 <sup>1</sup>[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.

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<sup>1</sup> 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 Movable 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 grain 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.

**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.

Special provisions relating to growing crops

(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.

**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.

Negotiable instruments and shares in corporations

**77.** (1) Where movable 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.

Sale by public auction

(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 be 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 movable 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 movable property, debts and shares

**79.** (1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable 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.

**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.

Vesting order  
in case of  
other property

#### *Sale of Immovable Property*

**82.** Sales of immovable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

What Courts  
may order  
sales

**83.** (1) Where an order for the sale of immovable 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 immovable 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.

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

(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 immovable 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 immovable 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 immovable 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.



**89.** (1) Where immovable 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,—

Application to set aside sale on deposit

- (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 immovable 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.

**90.** (1) Where any immovable 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:

Application to set aside sale on ground of irregularity or fraud

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.

**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 no saleable interest in the property sold.

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

**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.

Sale when to become absolute or be set aside

(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 immovable 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 immovable 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 immovable 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*

**97.** (1) Where the holder of a decree for the possession of immovable 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.

Resistance or obstruction to possession of immovable property

(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.

**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 the Judgment-debtor

**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.

Resistance or obstruction by *bona fide* claimant

**100.** (1) Where any person other than the judgment-debtor is disposed of immovable 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.

Dispossession by decree-holder or purchaser

(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.

**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.

*Bona fide* claimant to be restored to possession

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 immovable 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.

## 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.

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 survives 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.

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.

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

(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.

<sup>1</sup>[(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.]

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.

Determination of question as to legal representative

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.

No abatement by reason of death after hearing

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<sup>1</sup> 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 <sup>1</sup>[sections 4 and 5] of the <sup>1</sup>[Limitation Act, 1908] shall apply to application under sub-rule (2).

<sup>1</sup> 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).

<sup>1</sup>[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,

<sup>1</sup> 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 immovable 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 immovable 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.

- 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. Where witness resides within Court's jurisdiction
- 4.** (1) Any Court may in any suit issue a commission for the examination of— Persons for whose examination commission may issue
- (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 <sup>1</sup>[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.
- 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. Commission or Request to examine witness not within Bangladesh
- 6.** Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto. Court to examine witness pursuant to commission
- 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 Return of commission with depositions of witnesses

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<sup>1</sup> 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 <sup>1</sup>[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 <sup>2</sup>[within such time not exceeding three months as may be fixed by the Court]:

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>1</sup>[Provided that the Court may, on the prayer of the Commissioner and on sufficient cause being shown, extend the time.]

**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. Procedure of Commissioner

(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. Report and depositions to be evidence in suit. Commissioner may be examined in person

(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*

**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. Commission to examine or adjust accounts

**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 to give Commissioner necessary instructions. Proceedings and report to be evidence.

(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. Court may direct further inquiry

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<sup>1</sup> 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 immovable 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 <sup>1</sup>[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 <sup>2</sup>[:

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.

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<sup>1</sup> 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).

<sup>2</sup> 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*

**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.

Expenses of Commission to be paid into Court

**16.** Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,-

Powers of Commissioners

- (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 things relevant to the subject of inquiry;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

**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.

Attendance and examination of witnesses before Commissioner

(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.

**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.

Parties to appear before Commissioner

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

<sup>1</sup>[*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 <sup>2</sup>[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.

<sup>1</sup> 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).

<sup>2</sup> 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

<sup>1</sup>[*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

<sup>1</sup> 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.

<sup>1</sup>[**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.]]

<sup>2</sup>[**ORDER XXVIA**

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 <sup>3</sup>[\* \* \*]. 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 <sup>4</sup>[\*\*\*] 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

<sup>1</sup> Rules 8A and 8B were inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>2</sup> Order XXVIA was inserted by the Code of Civil Procedure (Amendment) Act, 1942 (Act No. XXIII of 1942).

<sup>3</sup> 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).

<sup>4</sup> 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 <sup>1</sup>[\* \* \*] 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 <sup>2</sup>[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.

<sup>1</sup> 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).

<sup>2</sup> 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.

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.

Person so authorised may act personally or appoint pleader

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.

Service on person so authorised, or on his pleader, to be good service

**ORDER XXIX**

SUITS BY OR AGAINST CORPORATIONS

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.

Subscription and verification of pleading

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served-

Service on corporation

(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.

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.

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

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.

**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.

Right of suit on death of partner

(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.

**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.

Notice in what capacity served

**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.

Appearance of 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.

No appearance except by partners

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 knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

6. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either—

Receipt by next friend or guardian for the suit of property under decree for minor

- (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 component 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 movable 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.

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.

Agreement or compromise by next friend or guardian for the suit

(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.

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.

Retirement of next friend

(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.

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.

Removal of next friend

(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.

**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.

Where minor co-plaintiff attaining majority desires to repudiate suit

(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.

**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.

Unreasonable or improper suit

(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.

**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.

Application of rules to persons of unsound mind

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 <sup>1</sup>[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 movable or immovable 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.

<sup>1</sup> 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).

**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.

Examination of applicant

(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.

If presented by agent, Court may order applicant to be examined by commission

**5.** The Court shall reject an application for permission to sue as a pauper—

Rejection of application

- (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.

**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.

Notice of day for receiving evidence of applicant's pauperism

**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.

Procedure at hearing

(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.

<sup>1</sup>[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.

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<sup>1</sup> 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.

<sup>1</sup>[**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

<sup>1</sup> 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 IMMOVABLE 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.

**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-

Final decree in  
foreclosure  
suit

- (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.

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-

Final decree in  
suit for sale

- (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.

**8.** (1) Where, before a final decree debaring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held 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-

Final decree in redemption suit

- (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.



<sup>1</sup>[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 mortgage 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

<sup>1</sup> 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.

**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.

Suit for sale necessary for bringing mortgaged property to sale

(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882, has not been extended.

**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.

Mortgages by the deposit of title-deeds and charges

**ORDER XXXV**

**INTERPLEADER**

**1.** In every suit of interpleader the plaintiff shall, in addition to other statements necessary for plaints, state-

Plaint in interpleader-suits

- (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.

**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.

Payment of thing claimed into Court

**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

Procedure where defendant 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.

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.

Charge for plaintiff's costs

**ORDER XXXVI**

SPECIAL CASE

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,—

Power to state case for Court's opinion

- (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, movable or immovable, 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.

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.

Where value of subject-matter must be stated

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.

Agreement to be filed and registered as suit

(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.

**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.

Defendant showing defence on merits to have leave to appear

(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.

**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 set aside decree

**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.

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

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.

**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. Security

(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.

**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. Procedure on application by surety to be discharged

(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.

**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: Procedure where defendant fails to furnish security or find fresh security

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 intent 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 immovable property.

Small Cause Court not to attach immovable 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 <sup>1</sup>[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.

<sup>2</sup>**[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

<sup>3</sup>**[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

<sup>1</sup> 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).

<sup>2</sup> Rule 3A was inserted by section 9 of the Code of Civil Procedure (Third Amendment) Act, 2003 (Act No. XL of 2003).

<sup>3</sup> 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 entitled 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 movable 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.

**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.

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

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorised to enter under this rule.

**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.

Application for such orders to be after notice

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

**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;

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

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.

**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.

Deposit of money, etc., in 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.

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.

When Collector may be appointed receiver

**ORDER XLI**

APPEALS FROM ORIGINAL DECREES

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.

Form of appeal. What to accompany 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.

Contents of memorandum

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:

Grounds which may be taken in appeal

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.

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.

Rejection or amendment of memorandum

(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.

**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.

Security in case of order for execution of decree appealed from

(2) Where an order has been made for the sale of immovable 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.*]

**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.

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

*Procedure on Admission 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.

Registry of memorandum of appeal

(2) Such book shall be called the Register of Appeals.

Register of Appeals

**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:

Appellate Court may require appellant to furnish security for costs

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 immovable property within Bangladesh other than the property (if any) to which the appeal relates.

Where appellant resides out of Bangladesh

(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

<sup>1</sup>[**12A.** (1) The Appellate Court shall not grant more than 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

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<sup>1</sup> 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.]

**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.

Appellate Court to give notice to Court whose decree appealed from

(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.

Transmission of papers to Appellate Court

(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.

Copies of exhibits in Court whose decree Appealed from

**14.**<sup>1</sup>[(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 acknowledgement due addressed to the respondent and all

Publication and service of notice of day for hearing appeal

<sup>1</sup> 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

<sup>1</sup>[**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:

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<sup>1</sup> 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.

**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.

Re-admission of appeal dismissed for default

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

<sup>1</sup>[**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:

Direct re-admission of appeal

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.]

**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.

Power to adjourn hearing and direct persons appearing interested to be made respondents

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<sup>1</sup> 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.

Direct re-hearing of appeal

<sup>1</sup>[**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.

<sup>1</sup> 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 may determine case finally

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*

**30.** 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.

Judgment  
when and  
where  
pronounced

**31.** The judgment of the Appellate Court shall be in writing and shall state—

Contents, date  
and signature  
of Judgment

- (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.

**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 civil suits.

**ORDER XLII**

APPEALS FROM APPELLATE DECREES

**1.** The rules of Order XLI shall apply, so far as may be, to Procedure  
appeals from appellate decrees.

**ORDER XLIII**

APPEALS FROM ORDERS

**1.** An appeal shall lie from the following orders under the Appeals from  
provisions of section 104, namely:— orders

- (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;
- <sup>1</sup>[(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;

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<sup>1</sup> 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.

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:

Inquiry into pauperism

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 <sup>1</sup>[APPELLATE DIVISION]

1. In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

"Decree" defined

2. Whoever desires to appeal to the <sup>1</sup>[Appellate Division] shall apply by petition to the Court whose decree is complained of.

Application to Court whose decree complained of

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 <sup>1</sup>[Appellate Division].

Certificate as to value or fitness

(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.

4. For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated but suits decided by separate judgments shall not be consolidated notwithstanding that they involve substantially the same questions for determination.

Consolidation of suits

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<sup>1</sup> 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 <sup>1</sup>[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 <sup>1</sup>[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 <sup>1</sup>[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

<sup>1</sup> 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 contest the nature of such security.

**8.** Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall—

Admission of appeal and procedure thereon

- (a) declare the appeal admitted,
- (b) give notice thereof to the respondent,
- (c) transmit to the <sup>1</sup>[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.

**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.

Revocation of acceptance of security

<sup>2</sup>[**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:

Power to dispense with notices in case of deceased parties

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.]

<sup>1</sup> 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).

<sup>2</sup> 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 <sup>1</sup>[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 <sup>1</sup>[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 <sup>1</sup>[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 movable 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 <sup>1</sup>[Appellate Division] may make on the appeal, or

<sup>1</sup> 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 <sup>1</sup>[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.

**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.

Increase of security found inadequate

(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.

**15.** (1) Whoever desires to obtain execution of any order of the <sup>1</sup>[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 <sup>1</sup>[Appellate Division] was preferred.

Procedure to enforce orders of the Appellate Division

(2) Such Court shall transmit the order of the <sup>1</sup>[Appellate Division] to the Court which passed the first decree appealed from, or to such other Court as the <sup>1</sup>[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

<sup>1</sup> 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 <sup>1</sup>[Appellate Division] is pleased otherwise to direct, no order of the <sup>1</sup>[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 <sup>1</sup>[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

<sup>1</sup> 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.

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;

Court may pass decree contingent upon decision of High Court Division

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.

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.

Judgment of High Court Division to be transmitted, and case disposed of accordingly

4. The costs (if any) consequent on a reference for the decision of the High Court Division shall be costs in the case.

Cost of reference to High Court Division

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 alter, etc., decree of Court making reference

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.

Power to refer to High Court division questions as to jurisdiction in small causes

(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.

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.

To whom applications for review may be made

3. The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

Form of applications for review

4. (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application where rejected

(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Application where granted

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.

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

Application for review in Court consisting of two or more Judges

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

<p><b>1.</b> (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.</p>	<p>Process to be served at expense of party issuing</p>
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<p>(2) The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.</p>	<p>Costs of service</p>
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<p><b>2.</b> 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.</p>	<p>Orders and notices how served</p>
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<p><b>3.</b> 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.</p>	<p>Use of forms in appendices</p>
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**ORDER XLIX**

HIGH COURT DIVISION

<p><b>1.</b> 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 <sup>1</sup>[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.</p>	<p>Who may serve processes of High Court Division</p>
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<p><b>2.</b> 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.</p>	<p>Saving in respect of High Court Division</p>
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<sup>1</sup> 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 <sup>1</sup>[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

##### <sup>2</sup>[\* \* \*] SMALL CAUSE COURTS

Small Cause  
Courts

**1.** The provisions hereinafter specified shall not extend to Courts constituted under the <sup>3</sup>[\* \* \*] 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;

<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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 immovable 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.*]

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**APPENDIX A****PLEADINGS****(1) Titles of Suits**

IN THE COURT OF

A. B. (*add description and residence*) .. .. *plaintiff,**Against*C. D. (*add description and residence*) .. .. *Defendant.***(2) Description of Parties in Particular Cases**<sup>1</sup>[Bangladesh]

The Advocate General of \_\_\_\_\_

The Collector of \_\_\_\_\_

<sup>2</sup>[\* \* \*] \_\_\_\_\_The A. B. Company, Limited, having its registered office at  
\_\_\_\_\_A. B., a public officer of the C. D. Company.  
\_\_\_\_\_A. B. (*add description and residence*), on behalf of himself and all  
other creditors of C. D., late of (*add description and residence*).  
\_\_\_\_\_A. B. (*add description and residence*), on behalf of himself and all  
other holders of debentures issued by the  
Company, Limited,  
\_\_\_\_\_The Official Receiver.  
\_\_\_\_\_A. B., a minor (*add description and residence*), by C. D. [ or by the  
Court of wards], his next friend.  
\_\_\_\_\_A. B. (*add description and residence*), a person of unsound mind [or  
of weak mind], by C. D., his friend.

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<sup>1</sup> The word "Bangladesh" was substituted, for the words and comma "Pakistan or the Province of, as the case may be" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The words "The state of" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

A. B., a firm carrying on business in partnership at \_\_\_\_\_

A. B. (*add description and residence*) by his constituted attorney C. D. (*add description and residence*).

A. B. (*add description and residence*), Shebait of Thakur.

A. B. (*add description and residence*), executor of C. D., deceased.

A. B. (*add description and residence*), heir of C. D., deceased.

**(3) Plaints**

**No. 1**

MONEY LENT

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, he lent the defendant Taka repayable on the \_\_\_\_\_ day of \_\_\_\_\_.

2. The defendant has not paid the same, except \_\_\_\_\_ Taka paid on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

[*If the plaintiff claims exemption from any law of limitation, say:-*]

3. The plaintiff was a minor [*or insane*] from the \_\_\_\_\_ day of \_\_\_\_\_ till the \_\_\_\_\_ day of \_\_\_\_\_.

4. [*Facts showing when the cause of action arose and that the Court has Jurisdiction.*]

5. The value of the subject-matter of the suit for the purpose of jurisdiction is \_\_\_\_\_ Taka and for the purpose of court-fees is \_\_\_\_\_ Taka.

6. The plaintiff claims \_\_\_\_\_ Taka, with interest at \_\_\_\_\_ percent from the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

**No. 2**

MONEY OVERPAID

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the plaintiff agreed to buy and the defendant agreed to sell \_\_\_\_\_ bars of silver at \_\_\_\_\_ [Taka] per tola of fine silver.

2. The plaintiff procured the said bars to be assayed by *E.F.*, who was paid by the defendant for such assay, and *E.F.* declared each of the bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly paid the defendant \_\_\_\_\_ Taka.

3. Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant when he made the payment.

<sup>1</sup> The word "Taka" was substituted, for the word "annas" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

4. The defendant has not repaid the sum so overpaid.  
[As in paras 4 and 5 of Form No. 1, and Relief claimed]

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**No. 3**

GOODS SOLD AT A FIXED PRICE AND DELIVERED

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the            day of            19   , E. F. sold and delivered to the defendant [one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods].
2. The defendant promised to pay    Taka for the said goods on delivery [or on the            day of           , some day before the plaint was filed].
3. He has not paid the same.
4. E. F. died on the            day of            19   . By his last will he appointed his brother, the plaintiff, his executor.  
[As in paras 4 and 5 of Form No. 1]
7. The plaintiff as executor of E. F. claims [Relief claimed].

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**No. 4**

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the            day of            19   , plaintiff sold and delivered to the defendant [sundry articles of house-furniture], but no express agreement was made as to the price.
2. The goods were reasonably worth    Taka.
3. The defendant has not paid the money.  
[As in paras 4 and 5 of Form No. 1, and Relief claimed]

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**No. 5**

GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the            day of            19   , E. F. agreed with the plaintiff that the plaintiff should make for him [six tables and fifty chairs] and that E. F. should pay for the goods on delivery    Taka.
2. The plaintiff made the goods, and on the            day of            19   , offered to deliver them to E. F., and has ever since been ready and willing so to do.
3. E. F. has not accepted the goods or paid for them.  
[As in paras 4 and 5 of Form No. 1, and Relief claimed]

**No. 6**

## DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION]

*(Title)*

A. B., the above-named plaintiff, states as follows:—

1. On the        day of    19    , the plaintiff put up at auction sundry [goods], subject to the condition that all goods not paid for and removed by the purchaser within [*ten days*] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. The defendant purchased [*one crate of crockery*] at the auction at the price of        Taka.

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [*ten days*] after.

4. The defendant did not take away the goods purchased by him, nor pay for them within [ten days] after the sale, nor afterwards.

5. On the        day of    19    , the plaintiff re-sold the [*crate of crockery*], on account of the defendant, by public auction, for        Taka        .

6. The expenses attendant upon such re-sale amounted        to Taka.

7. The defendant has not paid the deficiency thus arising, amounting to        Taka.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed*]

**No. 7**

## SERVICES AT A REASONABLE RATE

*(Title)*

A. B., the above-named plaintiff, states as follows:—

1. Between the        day of        19    , and the        day of        19    , at        , plaintiff [*executed sundry drawings, designs and diagrams*] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. The services were reasonably worth        Taka.

3. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed*]

**No. 8**

## SERVICES AND MATERIALS AT A REASONABLE COST

*(Title)*

A. B., the above-named plaintiff, states as follows:—

1. On the        day of        19    , at        the plaintiff built a house [known as No.        , in        ], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the amount to be paid for such work and materials.

2. The work done and materials supplied were reasonably worth Taka.
  3. The defendant has not paid the money.
- [As in paras, 4 and 5 of Form No. I, and Relief claimed]

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**No. 9**

USE AND OCCUPATION

(Title)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased, states as follows:—

1. That the defendant occupied the [house No. , Street], by permission of the said X. Y., from the day of 19 , until the day of 19 , and no agreement was made as to payment for the use of the said premises.
  2. That the use of the said premises for the said period was reasonably worth Taka.
  3. The defendant has not paid the money.
- [As in paras, 4 and 5 of Form No. I],
6. The plaintiff as executor of X. Y., claims [Relief claimed],

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**No. 10**

ON AN AWARD

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of E. F. and G. H., and the original document is annexed hereto.
2. On the day of 19 , the arbitrators awarded that the defendant should [pay the plaintiff Taka.]
3. The defendant has not paid the money.

[As in paras 4 and 5 of Form No. I, and Relief claimed]

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**No. 11**

ON A FOREIGN JUDGMENT

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , at in the State [or Kingdom] of , the Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff Taka, with interest from the said date.
2. The defendant has not paid the money.

[As in paras 4 and 5 of Form No. I, and Relief claimed]



**No. 12**

AGAINST SURETY FOR PAYMENT OF RENT

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the                    day of                    19    , E. F. hired from the plaintiff for the term of    years, the [house No.    ,    Street], at the annual rent of                    Taka, payable [monthly].

2. The defendant agreed, in consideration of the letting of the premises to E. F., to guarantee the punctual payment of the rent.

3. The rent for the month of                    19    , amounting to Taka, has not been paid.

[If, by the terms of the agreement, notice is required to be given to the surety,    add:—]

4. On the                    day of                    19    , the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.

5. The defendant has not paid the same.

[As in paras 4 and 5 of Form No. I, and Relief claimed]

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**No. 13**

BREACH OF AGREEMENT TO PURCHASE LAND

(Title)

A. B., the above named plaintiff, states as follows:—

1. On the                    day of                    19    , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed.

Or, on the                    day of                    19    , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of                    for                    Taka.

2. On the                    day of                    19    , the plaintiff, being then the absolute owner of the property [ and the same being free from all encumbrances as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [or, was ready and willing, and is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

[As in paras 4 and 5 of Form No. I, and Relief claimed]

**No. 14**

## NOT DELIVERING GOODS SOLD

*(Title)*

A. B., the above-named plaintiff, states as follows:-

1. On the                    day of                    19    , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the                    day of 19    , and that the plaintiff should pay therefor    Taka on delivery.
2. On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods.
3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

*[As in paras 4 and 5 of Form No. 1, and Relief claimed]*

**No. 15**

## WRONGFUL DISMISSAL

*(Title)*

A. B., the above-named plaintiff, states as follows:-

1. On the                    day of                    19    , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, *or as the case may be*], and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services Taka [monthly].
2. On the                    day of                    19    , the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.
3. On the                    day of                    19    , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

*[As in paras 4 and 5 of Form No. 1, and Relief claimed]*

**No. 16**

## BREACH OF CONTRACT TO SERVE

*(Title)*

A. B., the above-named plaintiff, states as follows:-

1. On the                    day of                    19    , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] salary of                    Taka, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the            day of            19    , offered so to do].

3. The defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards on the            day of    19    , he refused to serve the plaintiff as aforesaid.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

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**No. 17**

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP

(Title)

A. B., the above-named plaintiff, states as follows:-

1. On the            day of            19    , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed, [Or state the tenor of the contract.]

[2. The plaintiff duly performed all the conditions of the agreement on his part.]

3. The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner].

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

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**No. 18**

ON A BOND FOR THE FIDELITY OF A CLERK

(Title)

A. B., the above-named plaintiff, states as follows:-

1. On the            day of            19    , the plaintiff took E. F., into his employment as a clerk.

2. In consideration thereof, on the            day of            19    , the defendant agreed with the plaintiff that if E. F. should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all monies, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding            Taka.

[Or, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of Taka, subject to the condition that if E. F. should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.]

[Or, 2. In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.]

3. Between the            day of    19   , and    the            day of 19   , *E. F.* received money and other property, amounting to the value of            Taka, for the use of the plaintiff, for which sum he has not accounted to him, and the same still remains due and unpaid.

*[As in paras 4 and 5 of Form No. I, and Relief claimed]*

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**No. 19**

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE

*(Title)*

*A. B.*, the above-named plaintiff, states as follows:—

1. On the            day of            19   , the defendant, by a registered instrument, let to the plaintiff [the house No.            , Street] for the term of            years, contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. On the            day of            19   , during the said term, *E.F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend    Taka in moving, and lost the custom of *G. H.*, and *I. J.*, by such removal ].

*[As in paras 4 and 5 of Form No. I, and Relief claimed]*

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**No. 20**

ON AN AGREEMENT OF INDEMNITY

*(Title)*

*A. B.*, the above-named plaintiff, states as follows:—

1. On the            day of            19   , the plaintiff and defendant, being partners in trade under the style of *A. B.* and *C. D.*, dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the                    day of                    19                    , [ a judgment was recovered against the plaintiff and defendant by *E. F.*, in the High Court Division<sup>1</sup>[\* \* \*] at                    , upon a debt due from the firm to *E. F.*, and on the day of                    19                    ,] the plaintiff paid                    Taka [in satisfaction of the same].

4. The defendant has not paid the same to the plaintiff].

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

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**No. 21**

PROCURING PROPERTY BY FRAUD

(Title)

A. B., the above named plaintiff, states as follows:—

1. On the                    day of                    19                    , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth                    Taka over all his liabilities].

2. The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of                    Taka.

3. The said representations were false [*or state the particular falsehoods*] and were then known by the defendant to be so.

4. The defendant has not paid for the goods. [*Or, if the goods were not delivered.*] The plaintiff, in preparing and shipping the goods and procuring their restoration, expended                    Taka.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

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**No. 22**

FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON

(Title)

A. B., the above named plaintiff, states as follows:—

1. On the                    day of                    19                    , the defendant, represented to the plaintiff that *E. F.* was solvent and in good credit, and worth                    Taka over all his liabilities [or that *E. F.* then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit ].

2. The plaintiff was thereby induced to sell to *E. F.* [rice] of the value of                    Taka [on                    months credit].

3. The said representations were false and were then known by the defendant to be so, and were made by him with intend to deceive and defraud the plaintiff [*or to deceive and injure the plaintiff*].

4. *E. F.* [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

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<sup>1</sup> The words "of Judicature" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

**No. 23**

## POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND

(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called \_\_\_\_\_ and situate in \_\_\_\_\_ and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

**No. 24**

## CARRYING ON A NOXIOUS MANUFACTURE

(Title)

A. B., the above named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called \_\_\_\_\_, situated in \_\_\_\_\_.

2. Ever since the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands and corrupted the air, and settled on the surface of the lands.

3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having to beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

**No. 25**

OBSTRUCTING A RIGHT OF WAY

(Title)

A. B. the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of \_\_\_\_\_].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, *or* on foot] at all times of the year.

3. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, *or* on foot, *or* in any manner] along the way [and has ever since wrongfully obstructed the same].

4. (State special damages, if any)

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

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**No. 26**

OBSTRUCTION A HIGHWAY

(Title)

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from \_\_\_\_\_ to \_\_\_\_\_ so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [*or* into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expenses for medical attendance.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

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**No. 27**

DIVERTING A WATER-COURSE

(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the \_\_\_\_\_, in the village of \_\_\_\_\_, district of \_\_\_\_\_.

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than       sacks per day, whereas, before the said diversion of water, he was able to grind       sacks per day.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

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**No. 28**

OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION

(Title)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the       day of       19   , the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

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**No. 29**

INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the       day of       19   , the defendants were common carriers of passengers railway between       and       .

2. On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.

3. While he was such passenger, at       [or near the station of or between the stations of       and       ], a collision occurred on the said railway caused by the negligence and unskillfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., and state the special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as a [salesman].

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

[Or thus:-2. On that day the defendant by their servants so negligently and unskillfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., as in para 3.]

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**No. 30**

## INJURIES CAUSED BY NEGLIGENT DRIVING

(Title)

A. B., the above named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at .  
The defendant is a merchant of .

2. On the            day of            19    , the plaintiff was walking<sup>1</sup>[northward] along<sup>2</sup>[Mirpur Road], in the city of<sup>3</sup>[Dhaka], at about 3 o'clock in the afternoon. He was obliged to cross<sup>4</sup>[New Elephant Road], which is a street running into<sup>2</sup>[Mirpur Road] at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of<sup>4</sup>[New Elephant Road] into<sup>2</sup>[Mirpur Road]. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

**No. 31**

## FOR MALICIOUS PROSECUTION

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the            day of            19    , the defendant obtained a warrant of arrest from

<sup>1</sup> The word "northward" was substituted, for the word "westward" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The words "Mirpur Road" were substituted, for the words "Bunder Road" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> The word "Dhaka" was substituted, for the word "Karachi" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>4</sup> The words "New Elephant Road" was substituted, for the words "Wood Street" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

[a Magistrate of the said City, *or as the case may be*] on a charge of \_\_\_\_\_, and the plaintiff was arrested thereon, and imprisoned for \_\_\_\_\_ [days, *or* hours, and gave bail in the sum of Taka to obtain his release].

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the \_\_\_\_\_ day of 19\_\_\_\_, the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; *or* in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E. F.*, *or* in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed*]

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**No. 32**

MOVEABLE WRONGFULLY DETAINED

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1. On the \_\_\_\_\_ day of 19\_\_\_\_, plaintiff owned [*or state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [*or describe the goods*], the estimated value of which is \_\_\_\_\_ taka.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit, on the \_\_\_\_\_ day of 19\_\_\_\_, the plaintiff demanded the same from the defendant, but he refused to deliver them.

[*As in paras 4 and 5 of Form No. 1*],

6. The plaintiff claims—

- (1) delivery of the said goods, or Taka, in case delivery cannot be had;
  - (2) taka compensation for the detention thereof.
-

*The Schedule***No. 33**

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH  
NOTICE  
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the            day of    19    , the defendant C. D., for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth    Taka over all his liabilities].

2. The plaintiff was thereby induced to sell and deliver to C. D. [one hundred boxes of tea], the estimated value of which is    Taka.

3. The said representations were false, and were then known by C. D., to be so [or at the time of making the said representations, C. D., was insolvent, and knew himself to be so].

4. C. D. afterwards transferred the said goods to the defendant E. F. without consideration [or who had notice of the falsity of the representation].

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

7. The plaintiff claims—

- (1) delivery of the said goods, or            Taka, in case delivery cannot be had;
- (2)            Taka compensation for the detention thereof.

**No. 34**

RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE  
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the            day of            19    , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at            , contained [ten bighas].

2. The plaintiff was thereby induced to purchase the same at the price of            Taka in the belief that the said representation was true, and signed an agreement of which the original is hereto annexed. But the land has not been transferred to him.

3. On the            day of            19    , the plaintiff paid the defendant            Taka as part of the purchase-money.

4. That the said piece of ground contained in fact only [five bighas].

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

7. The plaintiff claims—

- (1)            Taka, with interest from the day of            19    ;
- (2) that the said agreement be delivered up and cancelled.

**No. 35**

## AN INJUNCTION RESTRAINING WASTE

(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is the absolute owner of [*describe the property*].
2. The defendant is in, possession of the same under a lease from the plaintiff.
3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[Pecuniary compensation may also be claimed]

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**NO. 36**

## INJUNCTION RESTRAINING NUISANCE

(Title)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No.                      ,                      Street, <sup>1</sup>[Chittagong]].
2. The defendant is, and at all the said times was, the absolute owner of [ a plot of ground in the same street                      ].
3. On the                      day of                      19                      , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

- [4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.]

[As in paras 4 and 5 of Form No. 1]

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

**No. 37**

## PUBLIC NUISANCE

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<sup>1</sup> The word "Chittagong" was substituted, for the word "Karachi" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(Title)

A. B., the above-named plaintiff, states as follows:—

1. The defendant has wrongly heaped up earth and stones on a public road known as Street at so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff has obtained the consent in writing of the Advocate General [or of the Collector or other officer appointed in this behalf] to the institution of this suit.

[As in paras 4 and 5 of Form No. 1]

5. The plaintiff claims—

(1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road;

(2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

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**No. 38**

INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE

(Title)

A. B., the above-named plaintiff, states as follows:—

[As in Form No. 27]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

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**No. 39**

RESTORATION OF MOVABLE PROPERTY THREATENED WITH DESTRUCTION,  
AND FOR AN INJUNCTION

(Title)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather which was executed by an eminent painter], and of which no duplicate exists [or state any facts showing that the property is of a kind that cannot be replaced by money].

2. On the day of 19 , he deposited the same for safe-keeping with the defendant.

3. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, out or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

[As in paras 4 and 5 of Form No. 1]

8. The plaintiff claims—

- (1) that the defendant be restrained by injunction from disposing of injuring or concealing the said [painting];
- (2) that he be compelled to deliver the same to the plaintiff.

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**No. 40**

INTERPLEADER  
(Title)

A. B., the above-named plaintiff, states as follows:—

1. Before the date of the claims hereinafter mentioned G. H. deposited with the plaintiff [*describe the property*] for [safe-keeping].

2. The defendant C. D. claims the same [under an alleged assignment thereof to him from G. H.]

3. The defendant E. F. also claims the same [under an order of G. H. transferring the same to him].

4. The plaintiff is ignorant of the respective rights of the defendants.

5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.

6. The suit is not brought by collusion with either of the defendants.

[As in paras 4 and 5 of Form No. 1]

9. The plaintiff claims—

- (1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;
- (2) that they be required to interplead together concerning their claims to the said property;
- [(3) that some person be authorised to receive the said property pending such litigation;]
- (4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

**No. 41**

ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND ALL  
OTHER CREDITORS

(Title)

A. B., the above-named plaintiff, states as follows:—

1. E. F., late of \_\_\_\_\_, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of \_\_\_\_\_ [here insert nature of debt and security, if any].

2. E. F. died on or about the \_\_\_\_\_ day of \_\_\_\_\_. By his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_ he appointed C. D. his executor [or devised his estate in trust, etc., or died intestate, as the case may be].

3. The will was proved by C. D. [or letters of administration were granted, etc.].

4. The defendant has possessed himself of the moveable [and immovable, or the proceeds of the immovable] property of E. F., and has not paid the plaintiff his debt.

[As in paras 4 and 5 of Form No. 1]

7. The plaintiff claims that an account may be taken of the moveable [and immovable] property of E. F., deceased, and that the same may be administered under the decree of the Court.

---

**No. 42**

ADMINISTRATION BY SPECIFIC LEGATEE

(Title)

[Alter form No. 41 thus]—

[Omit paragraph 1 and commence paragraph 2] E. F., late of \_\_\_\_\_ died on or about the \_\_\_\_\_ day of \_\_\_\_\_. By his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_ he appointed C. D. his executor, and bequeathed to the plaintiff [ here the specific legacy].

For paragraph 4 substitute—

The defendant is in possession of the movable property of E. F., and, amongst other things, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 7 substitute—

The plaintiff claims that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, etc.

**No. 43**

## ADMINISTRATION BY PECUNIARY LEGATEE

(Title)

[Alter Form No. 41 thus]—

[Omit paragraph 1 and substitute for paragraph 2] *E. F.*, late of \_\_\_\_\_, died on or about the \_\_\_\_\_ day of \_\_\_\_\_. By his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_, he appointed *C. D.* his executor, and bequeathed to the plaintiff a legacy of \_\_\_\_\_ taka.

*In paragraph 4 substitute "legacy" for "debt".*

Another form

(Title)

*E. F.*, the above-named plaintiff, states as follows:—

1. *A. B.* of *K.* in the \_\_\_\_\_ died on the \_\_\_\_\_ day of \_\_\_\_\_.

By his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_, he appointed the defendant and *M. N.* [who died in the testator's lifetime] his executors, and bequeathed his property, whether movable or immovable, to his executor in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immovable property for the person who would be the testator's heir-at-law, and as to his movable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The will was proved by the defendant on the \_\_\_\_\_ day of \_\_\_\_\_. The plaintiff has not been married.

The testator was at his death entitled to movable or immovable property; the defendant entered into the receipt of the rents of the immovable property and got in the movable property; he has sold some part of the immovable property.

[As in paras 4 and 5 of Form No. 1]

6. The plaintiff claims—

- (1) to have the movable and immovable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken;
- (2) such further or other relief as the nature of the case may require.



**No. 44**

## EXECUTION OF TRUSTS

*(Title)*

A. B., the above-named plaintiff, states as follows:—

1. He is one of the trustees under an instrument of settlement bearing date on or about the \_\_\_\_\_ day of \_\_\_\_\_ made upon the marriage of E. F. and G. H., the father and mother of the defendant [*or* an instrument of transfer of the estate and effects of E. F. for the benefit of C. D., the defendant and the other creditors of E. F.]

2. A. B., has taken upon himself the burden of the said trust, and is in possession of (*or* of the proceeds of ) the movable and immovable property transferred by the said instrument.

3. C. D. claims to be entitled to a beneficial interest under the instruments.

[*As in paras 4 and 5 of Form No. 1*]

6. The plaintiff is desirous to account for all the rents and profits of the said immovable property [and the proceeds of the sale of the said, *or* of part of the said, immovable property, *or* movable, *or* the proceeds of the sale of, *or* of part of, the said movable property, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of C. D., the defendant, and all other persons who may be interested in such administration, in the presence of C. D., and such other persons so interested as the Court may direct, or that C. D. may show good cause to the contrary.

[*N. B.-Where the suit is by a beneficiary, the plant may be modelled, mutatis mutandis, on the plant by a legatee.*]

**No. 45**

## FORECLOSURE OR SALE

*(Title)*

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagee of lands belonging to the defendant,

2. The following are the particulars of the mortgage:—

(a) (date);

(b) (names of mortgagor and mortgagee);

(c) (sum secured);

(d) (rate of interest );

(e) (Property subject to mortgage );

(f) (amount now due );

(g) (*if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims*).

(*If the plaintiff is mortgagee in possession, add* )

3. The plaintiff took possession of the mortgaged property on the day of \_\_\_\_\_ and is ready to account as mortgagee in possession from that time.

[As in paras 4 and 5 of Form No. 1]

6. The plaintiff claims—

(1) payment, or in default [sale or] foreclosure [and possession];

[Where Order 34, rule 6, applies.]

(2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

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**No. 46**

REDEMPTION

(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. The following are the particulars of the mortgage:—

(a) (date);

(b) (names of mortgagor and mortgagee);

(c) (sum secured);

(d) (rate of interest);

(e) (Property subject to mortgage);

(f) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).

(If the defendant is mortgagee in possession, add)

3. The defendant has taken possession [or has received the rents] of the mortgaged property.

[As in paras 4 and 5 of Form No. 1]

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof].

---

**No. 47**

SPECIFIC PERFORMANCE (No. 1)

(Title)

A. B., the above-named plaintiff, states as follows:—

1. By an agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ and signed by the defendant, he contracted to buy of [or sell to] the plaintiff certain immovable property therein described and referred to, for the sum of Taka.

2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

[As in paras 4 and 5 of Form No. 1]

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit.

---

**No. 48**

SPECIFIC PERFORMANCE (No. 2 )

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19    , the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.

The defendant was absolutely entitled to the immovable property described in the agreement.

2. On the                      day of                      19    , the plaintiff tendered Taka to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the                      day of                      19    , the plaintiff again demanded such transfer. [Or the defendant refused to transfer the same to the plaintiff.]

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

[As in paras 4 and 5 of Form No. 1]

8. The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [following the terms of the agreement];

(2) Taka compensation for withholding the same.

---

**No. 49**

PARTNERSHIP

(Title)

A. B., the above-named plaintiff, states as follows:—

1. He and C. D., the defendant, have been for                      years [or months] past carrying on business together under articles of partnership in writing [or under a deed, or under a verbal agreement].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners. [Or the defendant has committed the following breaches of the partnership articles:—

- (1)
- (2)
- (3)

[As in paras 4 and 5 of Form No. 1]

5. The plaintiff claims—

- (1) dissolution of the partnership;
- (2) that accounts be taken;
- (3) that a receiver be appointed.

(N. B.—In suits for the winding-up of any partnership, omit the claim for dissolution; and instead insert a paragraph stating the facts of the partnership having been dissolved.)

#### (4) Written Statements

##### *General defences*

Denial	<p>The defendant denies that (set out facts).</p> <p>The defendant does not admit that (set out facts).</p> <p>The defendant admits that            but says that</p> <p>The defendant denies that he is a partner in the defendant firm of</p>
Protest	<p>The defendant denies that he made the contract alleged or any contract with the plaintiff.</p> <p>The defendant denies that he contracted with the plaintiff as alleged or at all.</p> <p>The defendant admits assets but not the plaintiff's claim.</p> <p>The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.</p>
Limitation	<p>The suit is barred by article    or article    of the second schedule to the <sup>1</sup>[Limitation Act, 1908].</p>
Jurisdiction	<p>The Court has no jurisdiction to hear the suit on the ground that (<i>set forth the grounds</i>).</p>

<sup>1</sup> 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).

On the      day of      a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

The defendant has been adjudged an insolvent.      Insolvency

The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.

The defendant was a minor at the time of making the alleged contract.      Minority

The defendant as to the whole claim (*or* as to Taka      , Payment into part of the money claimed, *or as the case may be*) has paid into Court      Court Taka      and says that this sum is enough to satisfy the plaintiff's claim [*or* the part aforesaid].

The performance of the promise alleged was remitted on the      (*Date*).      performance remitted

The contract was rescinded by agreement between the plaintiff and defendant.      Rescission

The plaintiff's claim is barred by the decree in suit (*give the reference*).      *Res Judicata*

The plaintiff is estopped from denying the truth of (*Insert statements as to which estoppel is claimed*) because (*here state the facts relied on as creating the estoppel*).      Estoppel

Since the institution of the suit, that is to say, on the      day of      Ground of defence subsequent to institution of suit of      (set out facts).

**No.1**

DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not Taka.

[*or*]

4. } 5. } 6. }	Except as to Taka      , same as	{ 1. { 2. { 3.
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7. The defendant [*or* A. B., the defendant's agent] satisfied the claim by payment before suit to the plaintiff [*or* to C. D., the plaintiff's agent] on the      day of      19      .

8. The defendant satisfied the claim by payment after suit to the plaintiff on the      day of      19      .

**No. 2**

## DEFENCE IN SUITS ON BONDS

1. The bond is not the defendant's bond.
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

**No. 3**

## DEFENCE IN SUITS ON GUARANTEES

1. The principal satisfied the claim by payment before suit.
2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

**No. 4**

## DEFENCE IN ANY SUIT FOR DEBT

1. As to Taka 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff. Particulars are as follows:-

	Taka
1907, January, 25th ... ..	150
1907, February, 1st ... ..	50
Total ... ..	200

2. As to the whole [*or* as to Taka \_\_\_\_\_, part of the money claimed] the defendant made tender before suit of Taka \_\_\_\_\_ and has paid the same into Court.

**No. 5**

## DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged \_\_\_\_\_ to of \_\_\_\_\_ Street, <sup>1</sup>[Dhaka], livery stable keepers employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said \_\_\_\_\_.

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<sup>1</sup> The word "Dhaka" was substituted, for the word "Karachi" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

2. The defendant does not admit that the said carriage was turned out of <sup>1</sup>[New Elephant Road] either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

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**No. 6**

DEFENCE IN ALL SUITS FOR WRONGS

1. Denial of the several acts [*or* matters] complained of.

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**No. 7**

DEFENCE IN THE SUITS FOR DETENTION OF GOODS

1. The goods were not the property of the plaintiff.

2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows:—

1907, May 3rd. To carriage of the goods claimed from <sup>2</sup>[Dhaka] to <sup>3</sup>[Chittagong]:—

45 maunds at Taka 2 per maund ...      Taka 90.

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<sup>1</sup> The words "New Elephant Road" were substituted, for the words "Wood Street" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The word "Dhaka" was substituted, for the word "Lahore" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> The word "Chittagong" was substituted, for the word "Karachi" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

**No. 8**

## DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT

1. The plaintiff is not the author [*assignee, etc.*].
2. The book was not registered.
3. The defendant did not infringe.

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**No. 9**

## DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

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**No. 10**

## DEFENCE IN SUITS RELATING TO NUISANCES

1. The plaintiff's lights are not ancient [*or deny his other alleged prescriptive rights*].
2. The plaintiff's lights will not be materially interfered with by the defendant's building.
3. The defendant denies that he or his servant pollute the water [*or do what is complained of*].

[*If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim, i.e., whether by prescription, grant or what.*]

4. The plaintiff has been guilty of laches of which the following are particulars:—

1870. Plaintiff's mill began to work,

1871. Plaintiff came into possession,

1883. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [*If other grounds are relied on, they must be stated, e.g., limitation as to past damage.*]



**No. 11**

## DEFENCE TO SUIT FOR FORECLOSURE

1. The defendant did not execute the mortgage.
2. The mortgage was not transferred to the plaintiff (*if more than one transfer is alleged, say which is denied*).
3. The suit is barred by article \_\_\_\_\_ of the second schedule to the <sup>1</sup>[Limitation Act, 1908].
4. The following payments have been made, viz.:— Taka  
 (Insert date) \_\_\_\_\_, ... .. 1,000  
 (Insert date) \_\_\_\_\_, ... .. 500
5. The plaintiff took possession on the \_\_\_\_\_ of \_\_\_\_\_, and has received the rents ever since.
6. That plaintiff released the debt on the \_\_\_\_\_ of \_\_\_\_\_.
7. The defendant transferred all his interest to A. B. by a document dated \_\_\_\_\_.

**No. 12**

## DEFENCE TO SUIT FOR REDEMPTION

1. The plaintiff's right to redeem is barred by article \_\_\_\_\_ of the second schedule to the <sup>1</sup>[Limitation Act, 1908].
2. The plaintiff transferred all interest in the property to A. B.
3. The defendant, by a document dated the \_\_\_\_\_ day of \_\_\_\_\_ transferred all his interest in the mortgage debt and property comprised in the mortgage to A. B.
4. The defendant never took possession of the mortgaged property, or received the rents thereof.  
*(If the defendant admits possession for a time only, he should state the time and deny possession beyond what he admits.)*

**No. 13**

## DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE

1. The defendant did not enter into the agreement.

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<sup>1</sup> 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).

2. A. B. was not the agent of the defendant (*if alleged by plaintiff*).

3. The plaintiff has not performed the following conditions—(*Conditions*).

4. The defendant did not—(*alleged acts of part performance*).

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matter—(*State why*).

6. The agreement is uncertain in the following respects—(*State them*).

7. (*or*) The plaintiff has been guilty of delay.

8. (*or*) The plaintiff has been guilty of fraud (*or* misrepresentation).

9. (*or*) The agreement is unfair.

10. (*or*) The agreement was entered into by mistake.

11. The following are particulars of (7), (8), (9), (10) (*or as the case may be*).

12. The agreement was rescinded under Conditions of Sale, No. 11 (*or by mutual agreement*).

(*In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., the Limitation Act, accord and satisfaction, release, fraud, etc.*)

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#### No. 14

##### DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE

1. A. B's will contained a charge of debts; he died insolvent; he was entitled at his death to some immovable property which the defendant sold and which produced the net sum of Taka           , and the testator had some moveable property which the defendant got in, and which produced the net sum of Taka.

2. The defendant applied the whole of the said sums and the sum of Taka           , which the defendant received from rents of the immovable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

—————

**No. 15**

PROBATE OF WILL IN SOLEMN FORM

1. The said will and codicil of the deceased were not duly executed according to the provisions of the <sup>1</sup>[Succession Act, 1925] [*or of the Hindu Wills Act, 1870*].

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud so far as is within the defendant's present knowledge, being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof [*or of the contents of the residuary clause in the said will, as the case may be*].

6. The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims—

- (1) that the Court will pronounce against the said will and codicil propounded by the plaintiff;
- (2) that the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in solemn form of law.

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<sup>1</sup> The words, comma and figure "Succession Act, 1925" were substituted, for the words, comma and figure "Indian Succession Act, 1865" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

**No. 16**

PARTICULARS (O. 6, r. 5)

(Title of suit)

Particulars

The following are the particulars of (*here state the matters in respect of which particulars have been ordered*) delivered pursuant to the order of the of (*Here set out the particulars ordered in paragraphs if necessary*).

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**APPENDIX B  
PROCESS**
**No. 1**

SUMMONS FOR DISPOSAL OF SUIT (O. 5, rr 1, 5)

(Title)

To

[Name, description and place of residence]

WHEREAS

has instituted a suit against you for

you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the day of 19 , at o'clock in the noon, to answer the claim; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 , Judge.

Notice.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

**No. 2**

SUMMONS FOR SETTLEMENT OF ISSUES ( O. 5, rr. 1, 5 )

(Title)

To

[Name, description and place of residence ]

WHEREAS

has instituted a suit against you for you are hereby summoned to appear in this Court in person, or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the \_\_\_\_\_ day of 19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of 19\_\_\_\_. Judge

Notice.-1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

**No. 3**

SUMMONS TO APPEAR IN PERSONS ( O. 5, r. 3 )

(Title)

To

[Name, description and place of residence ]

WHEREAS \_\_\_\_\_ has instituted a suit against you for \_\_\_\_\_ you are \_\_\_\_\_ hereby summoned to appear in this Court in person on the day of 19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of 19\_\_\_\_. Judge

**No. 4**SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT (O.37, r.2 )  
(Title )

To

*[Name, description and place of residence ]*

WHEREAS                    has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Taka, balance of principal and interest due to him as the                    of a                    of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Taka                    and the sum of Taka                    for costs together with such interest, if any, from the date of the institution of the suit as the Court may order.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the Court, this                    day of 19                    .

*Judge***No. 5**NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED AS  
CO-PLAINTIFF (O. 1, r. 10 )

(Title)

To

*[Name, description and place of residence ]*

WHEREAS                    has instituted the above suit against for                    and, whereas it appears necessary that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved:

Take notice that you should on or before the                    day of 19                    , signify to this Court whether you consent to be so added.

GIVEN under my hand and the seal of the Court, this day of 19                    .

*Judge*

**No. 6**

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT

(O. 22, r. 4)

(Title)

To

WHEREAS the plaintiff \_\_\_\_\_ instituted a suit in this court on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, against the defendant who has since deceased, and whereas the said plaintiff has made an application to this Court alleging that you are the legal representative of the said \_\_\_\_\_, deceased, and desiring that you be made the defendant in his stead:

You are hereby summoned to attend in this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ A. M. to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of 19\_\_\_\_.

*Judge*

**No. 7**

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE

JURISDICTION OF ANOTHER COURT (O. 5, r. 21)

(Title)

WHEREAS it is stated that \_\_\_\_\_ defendant  
witness

in the above suit is at present residing in \_\_\_\_\_ : It is ordered that a summons returnable on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, be forwarded to the Court of \_\_\_\_\_ for service on the said defendant  
witness with a duplicate of this proceeding.

The court-fee of \_\_\_\_\_ chargeable in respect to the summons has been realized in this Court in stamps.

Dated \_\_\_\_\_ 19\_\_\_\_.

*Judge*

**No. 8**

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A  
PRISONER  
(O. 5, r. 24)  
(Title)

To

The Superintendent of the Jail at

UNDER the provisions of Order V, rule 24, of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is a prisoner in jail. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

*Judge***No. 9**

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC  
SERVANT OR SOLDIER (O. 5, rr. 27, 28 )  
(Title)

To

UNDER the provisions of Order V, rule 27 (or 28, as the case may be), of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

*Judge***No. 10**

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT (O. 5, r. 23)  
(Title)

Read proceeding from the forwarding for service on  
in Suit No. of 19 of that Court.

Read Serving Officer's endorsement stating that the and  
proof of the above having been duly taken by me on the oath  
of and it is ordered that the be  
returned to the with a copy of this  
proceeding.

*Judge*

NOTE.—This form will be applicable to process other than summons,  
the service of which may have to be effected in the same manner.



No. 11

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR NOTICE (O. 5, r. 18 )

(Title)

The Affidavit of \_\_\_\_\_, son of

I \_\_\_\_\_ make oath and say as follows:-  
affirm

(1) I am a process-server of this Court.

(2) On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, I received a summons notice issued by the Court of \_\_\_\_\_ in Suit No. \_\_\_\_\_ of 19\_\_\_\_ in the said Court, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, for service on \_\_\_\_\_.

(3) The said \_\_\_\_\_ was at the time personally known to me, and I served the said summons notice on him her on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at about \_\_\_\_\_ o'clock in the noon at \_\_\_\_\_ by tendering a copy thereof to him her and requiring his her signature to the original summons notice.

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence.

(b) Signature of process-server.

or,

(3) The said \_\_\_\_\_ not being personally known to me accompanied me to \_\_\_\_\_ and pointed out to me a person whom he stated to be the said \_\_\_\_\_, and I served the said summons notice on him her on the day of \_\_\_\_\_ 19\_\_\_\_, at about \_\_\_\_\_ o'clock in the noon at \_\_\_\_\_ by tendering a copy thereof to him her and requiring \_\_\_\_\_ his her signature to the original summons notice.

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence.

(b) Signature of process-server.

or,

(3) The said            and the house in which he ordinarily resides being personally known to me, I went to the said house, in            and thereon the            day of            19            , at about            o'clock in the            noon, I did not find the said            .

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

(3) One            accompanied me to            and there pointed out to me            which he said was the house in which            ordinarily resides. I did not find the said            there.

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

*If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.*

Sworn  
Affirmed by the said            before me  
this            day of            19            .

*Empowered under section 139 of the Code of Civil Procedure, 1908, to administer the oath to deponents.*

**No. 12**

[NOTICE TO DEFENDANT (O. 9, r. 6)]

(Title)

To

[Name, description and place of residence ]

WHEREAS this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons;

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the day of 19 is now fixed for the hearing of the same; in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 . Judge

---

**No. 13**

SUMMONS TO WITNESS (O. 16, rr. 1, 5 )

(Title)

To

WHEREAS your attendance is required to on behalf of the in the above suit, you are hereby required [personally] to appear before this Court on the day of 19 , at o'clock in the forenoon, and to bring with you [or to send to this Court].

A sum of Taka , being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908.

GIVEN under my hand and the seal of the Court, this day of 19 . Judge

NOTICE.-(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid, a sum of Taka will be tendered to you for each day's attendance beyond the day specified.

**No. 14**

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS (O. 16, r. 10)

*(Title)*

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law; and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the

day of 19 at o'clock in the forenoon and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this day  
of 19 . *Judge*

**No. 15**

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS (O. 16, r. 10)

*(Title)*

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued, requiring the attendance of the witness in this Court on the

day of 19 at o'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this day  
of 19 . *Judge*

**No. 16**

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS (O. 16, r. 10)

(Title)

To

The Bailiff of the Court.

WHEREAS the witness \_\_\_\_\_ <sup>cited</sup> by  
has \_\_\_\_\_  
not, after the expiration of the period limited in the proclamation issued  
for his attendance, appeared in Court; You are hereby directed to hold  
under attachment \_\_\_\_\_ property belonging to the said witness to the  
value of \_\_\_\_\_ and to submit a return, accompanied with an  
inventory thereof, within \_\_\_\_\_ days.

GIVEN under my hand and the seal of the Court, this day \_\_\_\_\_  
of 19\_\_\_\_ . \_\_\_\_\_ Judge

**No. 17**

WARRANT OF ARREST OF WITNESS (O. 16, r. 10)

(Title)

To

The Bailiff of the Court.

WHEREAS \_\_\_\_\_ has been duly served with a summons but has  
failed to attend [absconds and keeps out of the way for the purpose of  
avoiding a service of a summons]; You are hereby ordered to arrest and  
bring the said \_\_\_\_\_ before the Court.

You are further ordered to return this warrant on or before the  
day of \_\_\_\_\_ 19\_\_\_\_, with an endorsement certifying the day on  
and the manner in which it has been executed, or the reason why it has  
not been executed.

GIVEN under my hand and the seal of the Court, this day \_\_\_\_\_  
of 19\_\_\_\_ . \_\_\_\_\_ Judge

**No.18**

WARRANT OF COMMITTAL (O. 16, r. 16)

(Title)

To

The Officer in charge of the Jail at \_\_\_\_\_ .

WHEREAS the plaintiff (or defendant) in the above-named suit  
has made application to this Court that security be taken for the  
appearance of \_\_\_\_\_ to give evidence (or to produce a document),  
on the day of \_\_\_\_\_ 19\_\_\_\_; and whereas the Court has called  
upon the said \_\_\_\_\_ to furnish such security, which he has failed  
to do; This is to require you to receive the said \_\_\_\_\_ into your  
custody in the civil prison and to produce him before this Court at  
on the said day and on such other day or days as may be hereafter  
ordered.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of 19\_\_\_\_ . \_\_\_\_\_ Judge

**No. 19**

## WARRANT OF COMMITTAL (O. 16, r. 18)

(Title)

To

The Officer in charge of the Jail at .

WHEREAS , whose attendance is required before this Court in the above-named case to give evidence (*or* to produce a document), has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (*or* defendant), the said cannot give such evidence (*or* produce such document); and whereas the Court has called upon the said to give security for his appearance on the day of 19 , at which he has failed to do; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the day of 19 .

GIVEN under my hand and the seal of the Court, this day of 19 . Judge

**APPENDIX C**

## DISCOVERY, INSPECTION AND ADMISSION

**No. 1**

## ORDER FOR DELIVERY OF INTERROGATORIES (O. 11, r. 1)

In the Court of

Civil Suit No. of 19 .

A. B. .. .. . Plaintiff,

*against*

C. D., E. F. and G. H. .. .. Defendants

Upon hearing and upon reading the affidavit of filed the day of 19 ; It is ordered that the be at liberty to deliver to the interrogatories in writing, and that the said do answer the interrogatories as prescribed by Order XI, rule 8, and that the costs of this application be .

**No. 2**

INTERROGATORIES (O. 11, r. 4)

*(Title as in No. 1, supra)*

Interrogatories on behalf of the above-named [*plaintiff or defendant C. D.*] for the examination of the above-named [*defendants E. F. and G. H. or plaintiff*].

1. Did not, etc.

2. Has not, etc.

etc., etc., etc.

[*The defendant E. F. is required to answer the interrogatories numbered .*]

[*The defendant G. H. is required to answer the interrogatories numbered*]

**No. 3**

ANSWER TO INTERROGATORIES (O. 11, r. 9)

*(Title as in No. 1, supra)*

The answer of the above named defendant *E. F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E. F.*, make oath and say as follows:-

1. Enter answers to interrogatories in paragraphs numbered con-

2. secutively.

3. I object to answer the interrogatories numbered on the ground that [*state grounds of objection*].

**No. 4**

ORDER FOR AFFIDAVIT AS TO DOCUMENTS (O. 11, r. 12)

*(Title as in No. 1, supra)*

Upon hearing ; It is ordered that the do within days from the date of this order, answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be

**No. 5**

AFFIDAVIT AS TO DOCUMENTS (O. 11, r. 13)

*(Title as in No. 1, supra)*

I, the above-named defendant *C. D.*, make oath and say as follows:-

1. I have in my possession and power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first schedule hereto [*state grounds of objection*].

3. I have had but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [*state when and what has become of them and in whose possession they now are*].

5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession, custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

---

**No. 6**

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION (O. 11, r. 14)

(*Title as in No. 1, supra*)

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_; It is ordered that the \_\_\_\_\_ do, at all reasonable times, on reasonable notice, produce at \_\_\_\_\_, situate at \_\_\_\_\_, the following documents, namely, \_\_\_\_\_, and that the \_\_\_\_\_ be at liberty to inspect and peruse the documents so produced, and to make notes of their contents. In the meantime, it is ordered that all further proceedings to be stayed and that the costs of this application be \_\_\_\_\_.

---

**No. 7**

NOTICE TO PRODUCE DOCUMENTS (O. 11, r. 16)

(*Title as in No. 1, supra*)

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*plaint or written statement or affidavit*, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_].

[*Describe documents required*]

X. Y., *Pleader for the*

To Z., *Pleader for the* \_\_\_\_\_.



**No. 8**

## NOTICE TO INSPECT DOCUMENTS (O.11, r. 17)

*(Title as in No. I, supra)*

Take notice that you can inspect the documents mentioned in your notice of the            day of            19 [except the documents numbered            in that notice] at [insert place of inspection] On Thursday next, the            instant, between the hours of 12 and 4 o'clock.

Or, that the [plaintiff or defendant] objects to giving you inspection of documents mentioned in your notice of the            day of

19 , on the ground that [state the ground]:-

**No. 9**

## NOTICE TO ADMIT DOCUMENTS (O. 12, r. 3)

*(Title as in No. I, supra)*

Take notice that the plaintiff [or defendant] in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his pleader or agent, at            on            between the hours of            ; and the defendant [or plaintiff], is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are state to have been served, sent or delivered were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

*G. H., pleader [or agent] for plaintiff [or defendant].*

*To E. F., pleader [or agent] for defendant [or plaintiff].*

[Here describe the documents and specify as to each document whether it is original or a copy.]

**No. 10**

## NOTICE TO ADMIT FACTS (O. 12, r. 5)

*(Title as in No. I, supra)*

Take notice that the plaintiff [or defendant] in this suit requires the defendant [or plaintiff] to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [or plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

*G. H., pleader [or agent] for plaintiff [or defendant].*

*To E. F., pleader [or agent] for defendant [or plaintiff].*

The facts, the admission of which is required, are-

1. That M. died on the 1st January, 1890.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st April, 1896.
5. That O. was never married.

---

**No. 11**

ADMISSION OF FACTS PURSUANT TO NOTICE (O. 12, r. 5.)

*(Title as in No. I, supra)*

The defendant [*or plaintiff*] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit:

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [*or plaintiff*] on any other occasion or by any one other than the plaintiff [*or defendant, or party requiring the admission*].

E. F., *pleader* [*or agent*] *for defendant* [*or plaintiff*].

To G. H., *pleader* [*or agent*] *for plaintiff* [*or defendant*].

Facts admitted	Qualifications or limitations, if any, subject to which they are admitted.
1. That M. died on the 1st January, 1890.	1.
2. That he died intestate.. ..	2.
3. That N. was his lawful son..	3. But not that he was his only lawful son.
4. That O. died .. .. .	4. But not that he died on the 1st April, 1896.
5. That O. was never married..	5.

**NO. 12**

NOTICE TO PRODUCE (GENERAL FORM) (O. 12, r. 8)

*(Title as in No. I, supra)*

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in the suit, and particularly

G. H., *pleader [or agent] for plaintiff [or defendant].*

To E. F., *pleader [or agent] for defendant [or plaintiff].*

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**APPENDIX D  
DECREES**

---

**No. 1**

DECREE IN ORIGINAL SUIT (O. 20, rr. 6, 7)

*(Title)*

Claim for

THIS suit coming on this day for final disposal before  
in the presence of \_\_\_\_\_ for the plaintiff and of \_\_\_\_\_ for  
or the defendant, it is ordered and decreed that  
and that the sum of Taka \_\_\_\_\_ be paid by the  
to the \_\_\_\_\_ on account of the costs of this suit, with interest  
thereon at the rate of \_\_\_\_\_ per cent per annum from this date to date of  
realization.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_ .  
*Judge*

<i>Costs of Suit</i>				
Plaintiff	Defendant			
	TK.	<sup>1</sup> [***] <sup>2</sup> [Poisha]		TK. <sup>1</sup> [***] <sup>2</sup> [Poisha]
1. Stamp for plaint ...			Stamp for power ...	
2. Do. for power			Do. for petition	
3. Do. for exhibits ...			Pleader's fee ...	
4. Pleader's fee on Tk ...			Subsistence for witnesses	
5. Subsistence for witnesses. ...			Service of process	
6. Commissioner's fee ...			Commissioner's fee ...	
7. Service of process ...				
Total ...			Total ...	

**No. 2**

## SIMPLE MONEY DECREE. (Section 34)

*(Title)*

Claim for

THIS suit coming on this day for final disposal before \_\_\_\_\_ in  
the presence of \_\_\_\_\_ for the plaintiff  
and of \_\_\_\_\_ for the defendant, it is  
ordered that the \_\_\_\_\_ do pay to the \_\_\_\_\_ the  
sum of Taka \_\_\_\_\_ with interest thereon at the rate of \_\_\_\_\_ per cent  
per annum from \_\_\_\_\_ to the date of realization of the said sum and do  
also pay Taka \_\_\_\_\_, the costs of this suit, with interest thereon at the  
rate of \_\_\_\_\_ per cent. per annum from this date to the date of  
realization.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19\_\_\_\_.

*Judge*

<sup>1</sup> The space with heading "A" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The word "Poisha" was substituted, for letter "P" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

*Costs of Suit*

Plaintiff	Defendant				
	TK.	<sup>1</sup> [***] <sup>2</sup> [Poisha]		TK.	<sup>1</sup> [***] <sup>2</sup> [Poisha]
1. Stamp for plaint ...			Stamp for power ...		
2. Do. for power			Do. for petition		
3. Do. for exhibits ...			Pleader's fee ...		
4. Pleader's fee on Tk ...			Subsistence for witnesses		
5. Subsistence for witnesses. ...			Service of process		
6. Commission er's fee ...			Commissioner's fee ...		
7. Service of process ...					
Total ...			Total ...		

**No. 3**

## PRELIMINARY DECREE FOR FORECLOSURE

(Order XXXIV, rule 2.—Where accounts are directed to be taken)

*(Title)*

THIS suit coming on this                      day, etc.; It is hereby ordered and  
decreed that it be referred to                      as the Commissioner to take the  
accounts following:—

- (i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonably);

<sup>1</sup> The space with heading "A" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The word "Poisha" was substituted, for letter "P" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

- (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;
- (iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed 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);
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjudged against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the        day of       , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

- (i) that the defendant do pay into Court on or before the day of       , or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due, and the sum of Taka for the costs of the suit awarded to the plaintiff;

- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

#### SCHEDULE

*Description of the mortgaged property*

#### No. 3A

#### PRELIMINARY DECREE FOR FORECLOSURE

(Order XXXIV, rule 2.-Where the Court declares the amount due)

(Title)

THIS suit coming on this \_\_\_\_\_ day, etc.; It is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this \_\_\_\_\_ day of \_\_\_\_\_ is the sum of Taka \_\_\_\_\_ for principal, the sum of Taka \_\_\_\_\_ for interest on the said principal, the sum of Taka \_\_\_\_\_ for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage security, together with interest thereon, and the sum of Taka \_\_\_\_\_ for the costs of this suit awarded to the plaintiff, making in all the sum of Taka \_\_\_\_\_.

2. And it is hereby ordered and decreed as follows:—

- (i) that the defendant do pay into Court on or before the            day of            or any later date up to which time for payment may be extended by the Court of the said sum of Taka            .
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.



**SCHEDULE**

*Description of the mortgaged property*

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**No. 4**

FINAL DECREE FOR FORECLOSURE

(Order XXXIV, rule 3)

*(Title)*

Upon reading the preliminary decree passed in this suit on the day of \_\_\_\_\_ and further orders (if any) dated the \_\_\_\_\_ day of \_\_\_\_\_ and the application of the plaintiff dated the \_\_\_\_\_ day of \_\_\_\_\_ for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage:

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned; [and *(if the defendant be in possession of the said mortgaged property)* that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

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**No. 5**

PRELIMINARY DECREE FOR SALE

(Order XXXIV, rule 4.--Where accounts are directed to be taken)

*(Title)*

THIS suit coming on this \_\_\_\_\_ day, etc.; It is hereby ordered and decreed that it be referred to \_\_\_\_\_ as the Commissioner to take the accounts following:—

- (i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the

plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);

- (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;
- (iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed 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);
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjudged against any sums paid by the plaintiff under clause (iii), together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the \_\_\_\_\_ day of \_\_\_\_\_, and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed-

- (i) that the defendant to pay into Court on or before the day of \_\_\_\_\_, or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Taka \_\_\_\_\_ for the costs of the suit awarded to the plaintiff;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that, the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

**SCHEDULE**

*Description of the mortgaged property*

**No. 5A**

PRELIMINARY DECREE FOR SALE

(Order XXXIV, rule 4.-When the Court declares the amount due)

(Title)

THIS suit coming on this            day, etc.; It hereby is declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this            day of            is the sum of Taka            for principal, the sum of Taka            for interest on the said principal, the sum of Taka            for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage security, together with interest thereon, and the sum of Taka            for the costs of the suit awarded to the plaintiff, making in all the sum of Taka            .

2. And it is hereby ordered and decreed as follows:—

- (i) that the defendant do pay into Court on or before the            day of            or any later date up to which time for payment may be extended by the Court, the said sum of Taka            ;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required,

re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that, the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for the personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

**SCHEDULE***Description of the mortgaged property*

\_\_\_\_\_

**No. 6****FINAL DECREE FOR SALE**

(Order XXXIV, rule 5)

*(Title)*

Upon reading the preliminary decree passed in the suit on the day of \_\_\_\_\_, and further orders (if any) dated the \_\_\_\_\_ day of \_\_\_\_\_ and the application of the plaintiff dated the \_\_\_\_\_ day of \_\_\_\_\_ for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold, and that for the purposes of such sale the plaintiff shall produce before the Court of such officer as it appoints all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this application and such cost, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

**No. 7**

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF  
PAYMENT

BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED

(Order XXXIV, rule 7.—Where accounts are directed to be taken)

(Title)

THIS suit coming on this                    day, etc.; It is hereby ordered and  
decreed that it be referred to                    as the Commissioner to take the  
accounts following:—

- (i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);
- (ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;
- (iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed 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);
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. It is hereby further ordered and decreed that an amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the        day of        , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

- (i) that the plaintiff do pay into Court on or before the        day of        , or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Taka        for the costs of the suit awarded to the defendant;
- (ii) that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.



**SCHEDULE**

*Description of the mortgaged property*

**No. 7A**

PRELIMINARY DECREE FOR REDEMPTION WHEREON DEFAULT OF  
PAYMENT  
BY MORTGAGOR A DECREE FOR SALE IS PASSED

(Order XXXIV, rule 7.—Where accounts are directed to be taken)

*(Title)*

THIS suit coming on this                    day, etc.; It is hereby ordered and  
decreed that it be referred to                    as the Commissioner to  
take the accounts following:—

- (i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);
- (ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;
- (iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed 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);
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjusted due under clause (iv) above, together with interest thereon, shall first be adjudged against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the            day of           , and that, upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

- (i) that the plaintiff do pay into Court on or before the            day of            or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Taka            for the costs of the suit awarded to the defendant;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

#### **SCHEDULE**

##### *Description of the mortgaged property*

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#### **No. 7B**

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF  
PAYMENT

BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED

(Order XXXIV, rule 7.-Where the Court declares the amount due)

(Title)

THIS suit coming on this                      day, etc.; It is hereby declared  
that the amount due to the defendant on the mortgage mentioned in the

plaint calculated up to this                    day of                    is the sum of Taka for principal, the sum of Taka                    for interest on the said principal, the sum of Taka                    for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Taka                    for the costs of the suit awarded to the defendant, making in all the sum of Taka.

2. And it is hereby ordered and decreed as follows:—

- (i) that the plaintiff do pay into Court on or before the                    day of                    or any later date up to which time for payment may be extended by the Court the said sum of Taka                    ;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

**SCHEDULE**

*Description of the mortgaged property*

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**No. 7C**

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF  
PAYMENT

BY MORTGAGOR A DECREE FOR SALE IS PASSED

(Order XXXIV, rule 7.-Where the Court declares the amount due)

*(Title)*

This suit coming on this        day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this        day of        is the sum of Taka        for principal, the sum of Taka        for interest on the said principal, the sum of Taka        for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Taka        for the cost of this suit awarded to the defendant, making in all the sum of Taka        .

2. And it is hereby ordered and decreed as follows:-

- (i) that the plaintiff do pay into Court on or before the        day of        or any later date up to which time the payment may be extended by the Court the said sum of Taka.
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

#### **SCHEDULE**

*Description of the mortgaged property*

No. 7D

FINAL DECREE FOR FORECLOSURE IN A REDEMPTION SUIT ON  
DEFAULT OF PAYMENT BY MORTGAGOR  
(Order XXXIV, rule 8)

*(Title)*

Upon reading the preliminary decree in this suit on the day of \_\_\_\_\_ and further orders (if any) dated the day of \_\_\_\_\_, and the application of the defendant dated the \_\_\_\_\_ day of \_\_\_\_\_ for a final decree and after hearing the parties, and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the plaintiff and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned; [and (*if the plaintiff be in possession of the said mortgaged property*) that the plaintiff shall deliver to the defendant quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit hereby discharged and extinguished.

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**No. 7E**

FINAL DECREE FOR SALE IN A REDEMPTION SUIT ON DEFAULT OF  
PAYMENT BY MORTGAGOR

(Order XXXIV, rule 8)

(*Title*)

Upon reading the preliminary decree passed in the suit on the day of            and further orders (if any)            dated the            day of            ,            and the application of the defendant dated the            day of            for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that, the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the defendant for such costs of the suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance if any, shall be paid to the plaintiff or other persons entitled to receive the same.

**No. 7F**FINAL DECREE IN A SUIT FOR FORECLOSURE, SALE OR REDEMPTION  
WHERE THE MORTGAGOR PAYS THE AMOUNT OF THE DECREE

(Order XXXIV, rules 3, 5 and 8)

*(Title)*

THIS suit coming on this        day for further consideration and it appearing that on the        day of        the mortgagor or , the same being a person entitled to redeem, has paid into Court all amounts due to the mortgagee under the preliminary decree dated the        day of        ;  
It is hereby ordered and decreed that:—

- (i) the mortgaged do execute a deed of reconveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor [or, as the case may be, who has redeemed the property] or an acknowledgement of the payment of the amount due in his favour;
- (ii) the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.

And it is hereby further ordered and decreed that, upon the mortgagee executing the deed of reconveyance or acknowledgement in the manner aforesaid,-

- (i) the said sum of Taka        be paid out of Court to the mortgagee;
- (ii) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor [or the person making the payment] and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor or other person making the payment, the said deed or reconveyance or the acknowledgement in the office of the Sub-Register of        ; and
- (iii) if the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid preliminary mentioned to the mortgagor or such person as aforesaid who has made the payment.



**No. 8**

DECREE AGAINST MORTGAGOR PERSONALLY FOR BALANCE AFTER THE  
SALE OF THE MORTGAGED PROPERTY  
(Order XXXIV, rules 6 and 8A)

(Title)

Upon reading the application of the mortgagee (the plaintiff or defendant, as the case may be) and reading the final decree passed in the suit on the            day of            and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to Taka            and have been paid to the applicant out of the Court on the            day of            and that the balance now due to him under the aforesaid decree is Taka            ;

And whereas it appears to the Court that the said sum is legally-recover able from the mortgagor (plaintiff or defendant, as the case may be) personally;

It is hereby ordered and decreed as follows:-

That the mortgagor (plaintiff or defendant, as the case may be ) do pay to the mortgagee (defendant or plaintiff, as the case may be) the said sum of Taka            with further interest at the rate of six per cent per annum from the            day of            (the date of payment out of Court referred to above) up to the date of realization of the said sum, and the costs of this application.

**No. 9**

PRELIMINARY DECREE FOR FORECLOSURE OR SALE

[Plaintiff .. .. . 1st Mortgagee.

Vs.

Defendant No. 1 .. .. . Mortgagor.

Defendant No. 2 .. .. . 2nd Mortgagor].

(Order XXXIV, rules 2 and 4)

(Title)

The suit coming on this            day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this            day of            is the sum of Taka            for principal, the sum of Taka            for interest on the said principal, the sum of Taka            for costs, charges and expenses (other than the costs of the suit ) incurred by the plaintiff in respect of the mortgage-security with interest thereon and the sum of Taka            for the costs of this suit awarded to the plaintiff, making in all the sum of Taka            .

*(Similar declaration to be introduced with regard to the amount due to defendant No. 2 in respect of his mortgage if the mortgage-money due there under has become payable at the date of the suit.)*

2. It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2 [or *(if there are several subsequent mortgagees)* that the several parties hereto are entitled in the following order to the payment of the sums to them respectively:—]

3. And it is hereby ordered and decreed as follows:—

- (i) (a) that defendants or one of them do pay into Court on or before the day of            or any later date up to which time for payment has been extended by the Court the said sum of Taka        due to the plaintiff; and
  - (b) that defendant No. 1 do pay into Court on or before the day of            or any later date up to which time for payment has been extended by the Court the said sum of Taka        due to defendant No. 2; and
- (ii) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No.            (who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant No.            (who has made the payment) quiet and peaceable possession of the said property.

*(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage.)*

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree-

- (i) [*in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale*] that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property; or
- (ii) [*in the case of any other mortgage*] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before the Court or power relating to the mortgaged property; and
- (iii) [*in the case where a sale is ordered under clause 4(ii) above*] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that if any balance be left, it shall be paid to the defendant No. 1 or other persons entitled to receive the same; and
- (iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed—

(a) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply of a final decree (*in the same manner as the plaintiff might have done under clause 4 above*)—

(i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to defendant No. 2 quiet and peaceable possession of the said property; or

(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No. 2 shall produce before Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

(b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished,

6. And it is hereby further ordered and decreed *in the case where a sale is ordered under clause 5 above*—

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No. 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to defendant No. 2 in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due inspect of such costs of this suit and such costs, charges and expenses as may be payable to defendant No. 2 under rule 10, together with such

subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and

- (ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No. 2's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

**SCHEDULE**

*Description of the mortgaged property*

**No. 10**

PRELIMINARY DECREE FOR REDEMPTION OF PRIOR MORTGAGE AND FORECLOSURE OR SALE ON SUBSEQUENT MORTGAGE

[Plaintiff .. .. . 2nd Mortgagee.

vs.

Defendant No. 1 .. .. . Mortgagor.

Defendant No. 2 .. .. . 1st Mortgagee].

(Order XXXIV, rules 2, 4 and 7)

*(Title)*

The suit coming on this day, etc.; It is hereby declared that the amount due to defendant No. 2 on the mortgage mentioned in the plaint calculated up to this day of is the sum of Taka for principal, the sum of Taka for interest on the said principal, the sum of Taka for costs, charges and expenses (other than the costs of the suit ) Properly incurred by defendant No. 2 in respect of the mortgage-security with interest thereon and the sum of Taka for the costs of this suit awarded to defendant No.2 making in all the sum of Taka .

*(Similar declaration to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due there under has become payable at the date of the suit.)*

2. It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority to the plaintiff or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively:—

3. And it is hereby ordered and decreed as follows:—

- (i) (a) that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the day of            or any later date up to which time for payment has been extended by the Court the said sum of Taka            due to defendant No. 2; and  
(b) that defendant No. 1 do pay into Court on or before the day of            or any later date up to which time for payment has been extended by the Court the said sum of Taka            due to the plaintiff; and
- (ii) that, on payment of the sum declared due to defendant No. 2 by the plaintiff and defendant No. 1 or either or them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No.1 (whoever has made the payment), or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property.

*(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.)*

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree-

- (i) *in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale* that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the defendant No. 2 quiet and peaceable possession of the property; or
- (ii) *in the case of any other mortgage* that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and
- (iii) *in the case where a sale is ordered under clause 4(ii) above* that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to defendant No. 2 under the decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to the plaintiff and that if any balance be left, it shall be paid to the defendant No. 1 or other persons entitled to receive the same; and
- (iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, defendant No. 2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed,—

- (a) that, if the plaintiff pays into Court to the credit of this suit the amount adjudged due to defendant No. 2 but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep defendant No. 2's mortgage alive for his benefit and to apply for a final decree (*in the same manner as the defendant No. 2 might have done under clause 4 above*)—
  - (i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; or
  - (ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and
- (b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished,

6. And it is hereby further ordered and decreed (*in the case where a sale is ordered under clause 5 above*)—

- (i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of this suit and such costs, charges and



expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and

- (ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the defendant No. 2's mortgage or the plaintiff's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

#### SCHEDULE

*Description of the mortgaged property*

#### No. 11

#### PRELIMINARY DECREE FOR SALE

[Plaintiff ... .. Sub or derivative mortgagee.

vs.

Defendant No.1 ... .. Mortgagor.

Defendant No. 2 ... .. Original mortgagee].

(Order XXXIV, rule 4)

(Title)

This suit coming on this            day, etc.; It is hereby declared that the amount due to defendant no. 2 on his mortgage calculated up to this    day of    is the sum of Taka    for principal, the sum of Taka    for interest on the said principal, the sum of Taka    for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage security together with interest thereon and the sum of Taka    for the costs of the suit awarded to defendant No. 2, making in all the sum of Taka    .

(Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No. 2 to the plaintiff in respect of his mortgage.)

2. And it is hereby ordered and decreed as follows:—

- (i) that defendant no. 1 do pay into Court on or before the said                    day of                    or any later date up to which time for payment may be extended by the Court the said sum of Taka                    due to defendant No. 2.

*(Similar declarations to be introduced with regard to the amount. Due to the plaintiff, defendant No. 2 being at liberty to pay such amount.)*

- (ii) that, on payment of the sum declared due to defendant No. 2 by defendant No.1 in the manner prescribed in clause 2(I) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No. 1; or to such person as he appoints, and defendant No. 2 shall, if so required, reconvey or retransfer the property to defendant No.1 free from the said mortgage clear of and from all encumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property; and

- (iii) that, upon payment into the Court by defendant No. 1 of the amount due to defendant No. 2, the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall then be paid to defendant No.2; and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 for the amount of the balance.

3. And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc. [as in sub-clause (ii) of clause 2].

4. And it is hereby further ordered and decreed that, in default of payment by defendants Nos. 1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2: and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same.

6. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amounts payable to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of hem, as the case may be, shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No.2 or defendant No. 1 (as the case may be) for the amount of the balance.

7. And it is hereby further ordered and decreed that, if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)-*(declarations in the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder)*.

8. And it is hereby further ordered and decreed that the parties are as liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give some directions as it thinks fit.

### SCHEDULE

[Description of the mortgaged property]

\_\_\_\_\_

#### No. 12

DECREE FOR RECTIFICATION OF INSTRUMENT

(Title)

It is hereby declared that the \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, does not truly express the intention of the parties to such \_\_\_\_\_.

And it is decreed that the said \_\_\_\_\_ be rectified by \_\_\_\_\_.

\_\_\_\_\_

#### No. 13

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS

(Title)

It is hereby declared that the \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and made between \_\_\_\_\_ and \_\_\_\_\_, is void as against the plaintiff and all other the creditors, if any, of the defendant.

\_\_\_\_\_

#### No. 14

INJUNCTION AGAINST PRIVATE NUISANCE

(Title)

LET the defendant \_\_\_\_\_, his agent, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

**No. 15**

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL

(Title)

Let the defendant \_\_\_\_\_, his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises in \_\_\_\_\_ any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiffs windows in his said premises as are ancient lights.

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**No. 16**

INJUNCTION RESTRAINING USE OF PRIVATE ROAD

(Title)

LET the defendant \_\_\_\_\_, his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at \_\_\_\_\_, the soil of which belongs to the plaintiff, as a carriage way for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

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**No. 17**

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT

(Title)

It is ordered that the following accounts and inquiries be taken and made; that is to say:—

*In creditor's suit—*

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

*In suits by legatees—*

2. That an account be taken of the legacies given by the testator's will.

*In suits by next-of-kin—*

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [*or* one of the next-of-kin] of the intestate.

[After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit].

4. An account of the funeral and testamentary expenses.

5. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the moveable property of the deceased in outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the day of        next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the        \*shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased that the same be sold accordingly, and the proceeds paid into Court.

9. And that Mr. E. F. be receiver in the suit (*or* proceeding) and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the

\* (and shall give security by bond for the due performance of his duties to the amount of        Taka.

10. And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—

- (a) an inquiry what immovable property the deceased was seized or entitled to at the time of his death;
- (b) an inquiry what are the incumbrances (if any) affecting the immovable property of the deceased or any part thereof;
- (c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

11. And that the immovable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that G. H. shall have the conduct of the sale of the immovable property, and shall prepare the conditions and contracts of sale subject to the approval of the        \* and that in case any doubt or difficulty shall arise the papers shall be submitted to the judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the        \* shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the        \* to give the most useful publicity to such inquiries.

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\* Here insert name of proper officer.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done by completed, before the day of , and that the \*do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

15. And, lastly, it is ordered that this suit [*or* proceeding] stand adjourned for making final decree to the day of .

[Such part only of this decree is to be used as is applicable to the particular case.]

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**No. 18**

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE

(Title)

1. It is ordered that the defendant do, on or before the day of , pay into Court the sum of Taka , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Taka for interest, at the rate of Taka per cent per annum, from the day of to the day of , amounting together to the sum of Taka .

2. Let the \*of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Taka ordered to be paid into Court as aforesaid, as follows:—

- (a) The costs of the plaintiff to Mr. , his <sup>1</sup>[\* \* \*] pleader *or* and the costs of the defendant to Mr. , his <sup>1</sup>[\* \* \*] pleader.
- (b) And (*if any debts are due*) with the residue of the said sum of Taka after payment of the plaintiff's and defendant's costs as aforesaid, let the sums found to be owing to the several creditors mentioned in the schedule to the certificate, of the \*, together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

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\* Here insert name of proper officer.

<sup>1</sup> The words "attorney or" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

**No. 19**

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE,  
WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT  
OF LEGACIES

(Title)

1. It is declared that the defendant is personally liable to pay the legacy of Taka                      bequeathed to the plaintiff;
2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy;
3. And it is also ordered that the defendant do, within                      weeks after the date of the certificate of the                      \*, pay to the plaintiff the amount of what the                      \* shall certify to be due for principal and interest;
4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

**No. 20**

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN

(Title)

1. LET the                      \* of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Taka                      , the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E. F.*, the intestate, within one week after the taxation of the said costs by the said                      \*, and let the defendant retain for her own use out of such sum her costs, when taxed.
2. And it is ordered that the residue of the said sum or Taka                      after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—
  - (a) Let the defendant, within one week after the taxation of the said costs by the                      \* as aforesaid, pay one-third share of the said residue to the plaintiffs *A. B.*, and *C. D.*, his wife, in her right as the sister and one of the next-of-kin of the said *E. F.*, the intestate.
  - (b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said *E. F.*, the intestate.

---

\* Here insert name of proper officer.



- (c) And let the defendant, within one week after the taxation of the said costs by the \_\_\_\_\_ \*as aforesaid, pay the remaining one-third share of the said residue to *G. H.*, as the brother and the other next-of-kin of the said *E. F.*, the intestate.

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**No. 21**

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP  
AND THE TAKING OF PARTNERSHIP ACCOUNTS  
(Title)

IT is declared that the proportionate shares of the parties in the partnership are as follows:-

It is declared that this partnership shall stand dissolved [*or shall be deemed to have been dissolved*] as from the \_\_\_\_\_ day of \_\_\_\_\_, and it is ordered that the dissolution thereof as from that day be advertised in the \_\_\_\_\_ Gazette, etc.

And it is ordered that \_\_\_\_\_ be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:-

1. An account of the credits, property and effects now belonging to the said partnership;
2. An account of the debts and liabilities of the said partnership;
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the \_\_\_\_\_ \*may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the \_\_\_\_\_ day of \_\_\_\_\_, and that the \_\_\_\_\_ \*do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the \_\_\_\_\_ day of \_\_\_\_\_.

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the \_\_\_\_\_ day of \_\_\_\_\_.

---

\* Here insert name of proper officer.

**No. 22**FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE  
TAKING OF PARTNERSHIP ACCOUNTS

(Title)

It is ordered that the fund now in Court; amounting to the sum of Taka \_\_\_\_\_, be applied as follows:—

1. In payment of the debts due by the partnership set forth in the certificate of the \_\_\_\_\_ \*amounting in the whole to Taka \_\_\_\_\_.
2. In payment of the costs of all parties in this suit, amounting to Taka \_\_\_\_\_.

[These costs must be ascertained before the decree is drawn up]

3. In payment of the sum of Taka \_\_\_\_\_ to the plaintiff as his share of the partnership-assets, of the sum of Taka \_\_\_\_\_, being the residue of the said sum of Taka \_\_\_\_\_ now in Court, to the defendant as his share of the partnership-assets.

[Or, And that the remainder of the said sum of Taka \_\_\_\_\_ be paid to the said plaintiff (or defendant) in part payment of the sum of Taka \_\_\_\_\_ certified to be due to him in respect of the partnership-accounts.]

4. And that the defendant [or plaintiff] do on or before the day of \_\_\_\_\_ pay to the plaintiff [or defendant] the sum of Taka \_\_\_\_\_ being the balance of the said sum of Taka \_\_\_\_\_ to him, which will then remain due.

**No. 23**

## DECREE FOR RECOVERY OF LAND AND MESNE PROFITS

(Title)

It is hereby decreed as follows:—

1. That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.
2. That the defendant do pay to the plaintiff the sum of Taka \_\_\_\_\_ with interest thereon at the rate of \_\_\_\_\_ per cent Per annum to the date of realization on account of mesne profits which have accrued due prior to the institution of the suit.

Or

That an inquiry be made as to the amount of mesne profits which have accrued due prior to the institution of the suit.

---

\* Here insert name of proper officer.

3. That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

*SCHEDULE*

**APPENDIX E  
EXECUTION**

**No. 1**

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT SHOULD NOT BE RECORDED AS CERTIFIED (O. 21, r. 2)

*(Title)*

To

WHEREAS in execution of the decree in the above-named suit has applied to this Court that the sum of

Taka recoverable under the decree has been paid and adjusted and should be recorded as certified, this is to give you notice that you are to appear before this Court on the day of 19 , to show cause why the payment adjustment aforesaid should not be recorded as certified.

GIVEN under my hand and the seal of the Court, this day of 19. .

**No. 2**

PRECEPT (Section 46)

*(Title)*

UPON hearing the decree-holder it is ordered that this precept be sent the Court of at under section 46 of the Code of Civil Procedure, 1908, with directions to attach the property specified in the annexed schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree.

*Schedule*

Dated the day of 19.

*Judge*

**No. 3**

## ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT

(O. 21, r. 6)

*(Title)*

WHEREAS the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of at for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, 1908, it is

*Ordered:*

That a copy of this order be sent to with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the day of 19 .

*Judge***No. 4**

## CERTIFICATE OF NON-SATISFACTION OF DECREE (O. 21, r. 6)

*(Title)*

CERTIFIED that no (I) satisfaction of the decree of this Court in Suit No. of 19 , a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the day of 19 .

*Judge*

(1) *If partial, strike out "no" and state to what extent.*

No.5  
 CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT  
 (O. 21, R. 6)

Number of suit and the Court by which the decree was passed.	Names of parties.	Date of application for execution.	Number of the execution case.	Processes issued and dates of service thereof.	Costs of execution.	Amount realized.	How the case is disposed of.	Remarks.
1	2	3	4	5	6	7	8	9
					<sup>1</sup> [Taka	poisha]		
<i>Signature of Muharrir in charge.</i>					<i>Signature of Judge.</i>			

<sup>1</sup> The words "Taka poisha" were substituted, for the words "Rs. a.p." by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

## No. 6

## APPLICATION FOR EXECUTION OF DECREE (O.21, r.11)

In the Court of \_\_\_\_\_, I \_\_\_\_\_, decree-holder, hereby apply for execution of the decree herein below set forth:-

No. of suit.	Names of parties	Date of decree.	Whether any appeal preferred from decree.	Payment or adjustment made, if any.	Previous application, if any, with date and result.	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree.	Amount of costs, if any, awarded.	Against whom to be executed.	Mode in which the assistance of the Court is required.
1	2	3	4	5	6	7	8	9	10
789 of 1897	A.B. -Plaintiff C.D.-Defendant	October 11th, 1897	No.	None	<sup>1</sup> [Taka 72.25] recorded on application, dated the 4th March, 1899.	<sup>2</sup> [Taka 314.51] principal [interest at 6 per cent per annum, annum, from date of decree till payment.]	<sup>3</sup> [As awarded in the decree Subsequently incurred Taka Poisha 47 64 8 12 Total 55 76]	Against the defendant C.D.	[When attachment and sale of movable property is sought.] I pray that the total amount of Taka [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendant's movable property as per annexed list and paid to me. [When attachment and sale of immovable property is sought.] I pray that the total amount of Taka [together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realized by the attachment and sale of defendant's immovable property specified at the foot of this application and paid to me.

I \_\_\_\_\_ declare that what is stated herein is true to the best of my knowledge and belief.  
Signed \_\_\_\_\_, decree-holder.  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

<sup>1</sup> The words and figure "Taka 72.25" were substituted, for the words and figure "Rs. 72-4" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The words and figure "Taka 314.51" were substituted, for the words and figure "Rs. 314-8-2" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> The words and figures "As awarded in the decree subsequently incurred \_\_\_\_\_ were substituted, for the  
Taka Poisha.  
47 64  
8 12  
Total 55 76"

words and figures "As awarded in the decree subsequently incurred \_\_\_\_\_ by section 3 and 2nd Schedule of the  
Rs.A. P  
47 10 4  
8 2 0  
Total 55124"  
Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

[When attachment and sale of immovable property is sought]  
Description and Specification of property

The undivided one-third share of the judgment-debtor in a house situated in the village of , value Taka 40, and bounded as follows :-

East by G's house; west by H's house; south by public road; north by private land and J's house.

I declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed , decree-holder.

**No. 7**

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE

(O. 21, r. 16)

(Title)

To

WHEREAS has made application to this Court for execution of decree in Suit No. of 19 , on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court on the day of 19 , to show cause why execution should not be granted.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

**No. 8**

WARRANT OF ATTACHMENT OF MOVABLE PROPERTY IN EXECUTION OF A DECREE FOR MONEY (O. 21, r. 30)

(Title)

To

The Bailiff of the Court.

WHEREAS was ordered by decree of this Court passed on the day of 19 , in Suit No. of 19 , to pay to the plaintiff the sum of

Decree				Taka as noted in the margin ; and
Principal .. ..				whereas the said sum of Taka has
Interest .. ..				not been paid ; These are to command
Costs .. ..				you to attach the movable property of
Costs of				the said as set forth in the
execution ..				schedule hereunto annexed, or which
Further interest..				shall be pointed out to you by the said
				, and unless the said shall pay to
				you the said sum of Taka together
				with Taka , the costs of this
				attachment, to hold the same until
				further orders from this Court.
Total ..				

You are further commanded to return this warrant on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of \_\_\_\_\_ 19\_\_\_\_.

*Judge*

**SCHEDULE**

**No. 9**

WARRANT FOR SEIZURE OF SPECIFIC MOVABLE PROPERTY ADJUDGED BY DECREE (O. 21, R. 31)

*(Title)*

To

The Bailiff of the Court.

WHEREAS \_\_\_\_\_ was ordered by decree of this Court passed on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in Suit No. \_\_\_\_\_ of 19\_\_\_\_, \_\_\_\_\_ to deliver to the plaintiff the movable property (*or a share in the movable property*) specified in the schedule hereunto annexed, and whereas the said property (*or share*) has not been delivered ;

These are to command you to seize the said movable property (*or a share of the said movable property*) and to deliver it to the plaintiff or to such persons as he may appoint in his behalf.

GIVEN under my hand and the seal of the Court, this day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*

**SCHEDULE**

**No. 10**

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT (O. 21, r. 34)

*(Title)*

To

TAKE notice that on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of \_\_\_\_\_, whereof a draft is hereunto annexed, of the immovable property specified hereunder, and that the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, is appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

*Description of Property*

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*



**No. 11**

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC. (O. 21, r. 35)  
(Title)

To

The Bailiff of the Court.

WHEREAS the undermentioned property in the occupancy of \_\_\_\_\_ has been decreed to \_\_\_\_\_ the plaintiff in this suit. You are hereby directed to put the said \_\_\_\_\_ in possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19\_\_\_\_\_ .

*Judge*

**SCHEDULE**

**No. 12**

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE  
(O. 21, r. 37)  
(Title)

To

WHEREAS \_\_\_\_\_ has made application to this Court for execution of decree in Suit No. \_\_\_\_\_ of 19\_\_\_\_\_ by arrest and imprisonment of your person, you are hereby required to appear before this Court on the

day of \_\_\_\_\_ 19\_\_\_\_\_, \_\_\_\_\_ to show cause why you should not be committed to the civil prison in execution of the said decree.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19\_\_\_\_\_ .

*Judge.*

**No. 13**

WARRANT OF ARREST IN EXECUTION (O. 21, r. 38)  
(Title)

To

The Bailiff of the Court.

WHEREAS \_\_\_\_\_ was adjudged by a decree of the Court in Suit No. \_\_\_\_\_ of 19\_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_, to pay to the decree-holder the sum of Taka \_\_\_\_\_ as noted in the margin,

Decree				
Principal .. ..	..			
Interest .. ..	..			
Costs .. ..	..			
Execution .. ..	..			
Total .. ..	..			

and where as the said sum of Taka \_\_\_\_\_ has not been paid to the said decree-holder in satisfaction of the said decree; These are to command you to arrest the said judgment-debtor and unless the said judgment-debtor shall pay to you the said sum of Taka \_\_\_\_\_ together with Taka \_\_\_\_\_ for the costs of executing this process, to bring the

said defendant before the Court with all convenient speed.

You are further commanded to return this warrant on or before the            day of            19            , with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this            day of            19            .

*Judge.*

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**No. 14**

WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL (O.21, r. 40)  
(Title)

To

The Officer in charge of the Jail at            .

WHEREAS            who has been brought before this Court this            day of            19            , under a warrant in execution of a decree which was made and pronounced by the said Court the            day of            19            , and by which decree it was ordered that the said            should pay            ; And whereas the said            has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody; You are hereby commanded and required to take and receive the said            into the civil prison and keep him imprisoned therein for a period not exceeding            or until the said decree shall be fully satisfied, or the said            shall be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, 1908; and the Court does hereby fix            annas per diem as the rate of the monthly allowance for the subsistence of the said            during his confinement under this warrant of committal.

GIVEN under my signature and the seal of the Court, this day of            19            .

*Judge.*

---

**No. 15**

ORDER FOR THE RELEASE OF A PERSON IMPRISONED  
IN EXECUTION OF A DECREE  
(Section 58,59)  
(Title)

To

The Officer in charge of the Jail at            .

UNDER orders passed this day, you are hereby directed to set free            judgment-debtor now in your custody.

Dated

*Judge*

**No. 16**

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE-ATTACHED  
CONSISTS OF MOVABLE PROPERTY TO WHICH THE DEFENDANT IS  
ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO  
THE IMMEDIATE POSSESSION THEREOF (O. 21, r, 46)

(Title)

To

WHEREAS

has failed to satisfy a decree passed against \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in Suit No. \_\_\_\_\_ of 19\_\_\_\_, in favour of \_\_\_\_\_ for Taka \_\_\_\_\_; It is ordered that the defendant be, and is hereby, prohibited and restrained until the further order of this Court, from receiving from \_\_\_\_\_ the following property in the possession of the said \_\_\_\_\_, that is to say, \_\_\_\_\_, to which the defendant is entitled, subject to any claim of the said \_\_\_\_\_, and the said \_\_\_\_\_ is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge*

---

**No. 17**

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT  
SECURED BY NEGOTIABLE INSTRUMENTS (O.21, r.46)

(Title)

To

WHEREAS

has failed to satisfy a decree passed against \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in Suit No. \_\_\_\_\_ of 19\_\_\_\_, in favour of \_\_\_\_\_ for Taka \_\_\_\_\_; It is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, \_\_\_\_\_ and that you, the said \_\_\_\_\_, be and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge*

**No. 18**

## ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN  
THE CAPITAL OF A CORPORATION (O. 21, r. 46)

(Title)

To

to \_\_\_\_\_ Secretary of \_\_\_\_\_ Defendant and  
Corporation.

WHEREAS \_\_\_\_\_ has failed to satisfy a  
decree passed against \_\_\_\_\_ on the day of \_\_\_\_\_ 19\_\_\_\_,  
in suit No. \_\_\_\_\_

of 19\_\_\_\_, in favour of \_\_\_\_\_, for Taka \_\_\_\_\_;  
It is ordered that you, the defendant, be, and you are hereby,  
prohibited and restrained, until the further order of this Court, from  
making any transfer of \_\_\_\_\_ shares in the aforesaid Corporation,  
namely, \_\_\_\_\_, or from receiving  
payment of any dividends thereon; and you, \_\_\_\_\_,  
the Secretary of the said Corporation, are hereby prohibited and  
restrained from permitting any such transfer or making any such  
payment.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19\_\_\_\_.

Judge.

**No. 19**

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF  
RAILWAY COMPANY OR LOCAL AUTHORITY (O. 21, r. 48)

(Title)

To

WHEREAS  
Judgment-debtor in the above-named case, is a (*describe officer of  
judgment-debtor*) receiving his salary (*or* allowances) at your hands;  
and whereas \_\_\_\_\_ decree-holder in the said case, has applied in  
this Court for the attachment of the salary (*or* allowances) of the  
said \_\_\_\_\_ to the extent of \_\_\_\_\_ due to him under the  
decree; you are hereby required to withhold the said sum of \_\_\_\_\_  
from the salary of the said \_\_\_\_\_ in monthly installments of \_\_\_\_\_  
and to remit the said sum (*or* monthly installments) to  
this Court.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19\_\_\_\_.

Judge.

**No. 20**

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT (O. 21, r. 51)

(Title)

To

The Bailiff of the Court.

WHEREAS an order has been passed by this Court on the      day  
of 19      , for the attachment of      ; You are  
hereby directed to seize the said      and bring the same into Court.

GIVEN under my hand and the seal of the Court, this      day      of  
19      .

Judge

---

**No. 21**

ATTACHMENT

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR  
OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR PUBLIC  
OFFICER (O. 21, r. 52)

(Title)

To

SIR,

The plaintiff having applied, under rule 52 of Order XXI of the  
Code of Civil Procedure, 1908, for an attachment of certain money  
now in your hands (*here state how the money is supposed to be in the  
hands of the person addressed, on what account, etc*), I request that  
you will hold the said money subject to the further order of this Court.

I have the honour to be,

SIR,

Your most obedient Servant,

Judge

Dated the      day of      19      .

---

**No. 22**

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED  
IT (O. 21, r. 53)

(Title)

To

The Judge of the Court of      .

SIR,

I have the honour inform you that the decree obtained in your  
Court on the      day of      19      , by

In Suit No. \_\_\_\_\_ of 19\_\_\_\_, in which he was  
 \_\_\_\_\_ and \_\_\_\_\_ was \_\_\_\_\_ has  
 been attached by this Court on the application of \_\_\_\_\_,  
 the \_\_\_\_\_ in the suit specified above. You are  
 therefore requested to stay the execution of the decree of your Court  
 until you receive an intimation from this Court that the present notice  
 has been cancelled or until execution of the said decree is applied for  
 by the holder of the decree now sought to be executed or by his  
 judgment-debtor.

I have the honour, etc.,  
*Judge.*

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

**No. 23**

NOTICE OF ATTACHMENT OF DECREE TO THE HOLDER OF THE  
 DECREE (O. 21, r. 53)  
 (Title)

To

WHEREAS an application has been made in this Court by the  
 decree-holder in the above suit for the attachment of a decree  
 obtained by you on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in the  
 Court of \_\_\_\_\_ in suit No. \_\_\_\_\_ of 19\_\_\_\_  
 \_\_\_\_\_, in which \_\_\_\_\_ was \_\_\_\_\_ and  
 \_\_\_\_\_ was \_\_\_\_\_; It is  
 ordered that you, the said \_\_\_\_\_, be, and you are  
 hereby, prohibited and restrained, until the further order of this  
 Court, from transferring or charging the same in anyway.

GIVEN under my hand and the seal of the Court, this  
 day of \_\_\_\_\_ 19\_\_\_\_.

*Judge*

**No. 24**

ATTACHMENT IN EXECUTION  
 PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF  
 IMMOVABLE PROPERTY (O. 21, r. 54)  
 (Title)

To

Defendant.

WHEREAS you have failed to satisfy a decree passed against  
 you on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_,  
 in Suit No. \_\_\_\_\_ of 19\_\_\_\_, in favour of \_\_\_\_\_,  
 for Taka \_\_\_\_\_; It is ordered that you,

the said \_\_\_\_\_, be \_\_\_\_\_, and  
You are hereby, prohibited and restrained, until the further order of  
this Court, from transferring or charging the property specified in the  
schedule hereunto annexed, by sale, gift or otherwise, and that all  
persons be, and that they are hereby, prohibited from receiving the  
same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19 \_\_\_\_\_.

*Judge*

*Schedule*

**No. 25**

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC., IN THE  
HANDS OF THIRD PARTY (O. 21, r. 56)

*(Title)*

To

WHEREAS the following property \_\_\_\_\_ has  
been attached in execution of a decree in Suit No. \_\_\_\_\_  
of \_\_\_\_\_ 19 \_\_\_\_\_, passed on the  
day of \_\_\_\_\_ 19 \_\_\_\_\_, in favour of  
for Taka \_\_\_\_\_; It is ordered that the  
property so attached, consisting of Taka \_\_\_\_\_ in money  
and Taka \_\_\_\_\_ in currency-notes, or a sufficient part thereof to satisfy  
the said decree, shall be paid over by you, the said  
to \_\_\_\_\_.

GIVEN under my hand and the seal of the Court, this day of  
19 \_\_\_\_\_.

*Judge*

**No. 26**

NOTICE TO ATTACHING CREDITOR (O. 21, r. 58)

*(Title)*

To

WHEREAS \_\_\_\_\_ has made application to this  
Court for the removal of attachment on  
placed at your instance in execution of the decree in suit No.  
of 19 \_\_\_\_\_, this is to give you notice to appear before this Court on  
the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_,  
either in person or by a pleader of the Court duly instructed to support  
your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19 \_\_\_\_\_.

*Judge*

**No. 27**

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR  
MONEY (O. 21, r. 66)  
(Title)

To

The Bailiff of the Court.

THESE are to command you to sell by auction, after giving days previous notice, by affixing the same in this Court-house, and after making due proclamation, the property attached under a warrant from this Court, dated the day of 19 , in execution of a decree in favour of in Suit No. of 19 , or so much of the said property as shall realize the sum of Taka , being the of the said decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

**No. 28**

NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION  
(O. 21, r. 66)  
(Title)

To

Judgment-debtor.

WHEREAS in the above-named suit holder, has applied for the sale of ;

You are hereby informed that the day of 19 has been fixed for settling the terms of the proclamation of sale.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

**No. 29**

PROCLAMATION OF SALE (O. 21, r. 66)  
(Title)

Notice is hereby given that, under rule 64 of Order XXI of the Code of Civil Procedure, 1908, an order has been passed by this Court for the sale of the attached property mentioned in the annexed

(1) Suit No. of 19 , schedule, in satisfaction of the claim of the decided by the of in which was plaintiff and decree-holder in the suit (1) mentioned in was defendant. the margin, amounting with costs and interest up-to-date of sale to the sum of .



The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors above-named as mentioned in the schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement, the sale will be held by \_\_\_\_\_ at the monthly sale commencing at \_\_\_\_\_ o'clock on the \_\_\_\_\_ at \_\_\_\_\_. In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorised agent. No bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further.

*Conditions of Sale*

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, misstatement or omission in this proclamation.
2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.
3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.
4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.
5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.
6. In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under my hand and the seal of the Court, this     day of  
19

*Judge.*

*Schedule of Property*

No. of lot.	Description of property to be sold, with the name of each owner where there are more judgment-debtors than one.	The revenue assessed upon the estate or part of the estate if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government	Detail of any incumbrances to which the property is liable.	Claims, if any, which have been put forward to the property and any other known particulars bearing on its nature and value.

**No. 30**

ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF  
SALE  
(O. 21, r. 66)  
(Title)

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the                             day of             19             , has been fixed for the sale of the said property

copies of the proclamation of sale are by this warrant made over to you, and you are hereby                             ordered to have the proclamation published by beat of drum within each of the

properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .  
Schedule \_\_\_\_\_ Judge.

**No. 31**

CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A RE-SALE OF PROPERTY BY REASON OF THE PURCHASER'S DEFAULT (O. 21, r. 71)

(Title)

Certified that at the re-sale of the property in execution of the decree in the above-named suit, in consequence of default on the part of \_\_\_\_\_, purchaser, there was a deficiency in the price of the said property amounting to Taka \_\_\_\_\_, and that the expenses attending such re-sale amounted to Taka \_\_\_\_\_, making a total of Taka \_\_\_\_\_, which sum is recoverable from the defaulter.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .  
Officer holding the sale

**No. 32**

NOTICE TO PERSON IN POSSESSION OF MOVABLE PROPERTY SOLD IN EXECUTION (O. 21, r. 79)

(Title)

To \_\_\_\_\_  
WHEREAS \_\_\_\_\_ has become the purchaser at a public sale in execution of the decree in the above suit of \_\_\_\_\_ now in your possession, you are hereby prohibited from delivering possession of the said \_\_\_\_\_ to any person except the said \_\_\_\_\_.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .  
Judge.

**No. 33**

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER (O. 21, r. 79)

(Title)

To \_\_\_\_\_ and to \_\_\_\_\_  
WHEREAS \_\_\_\_\_ has become the purchaser at a public sale in execution of the decree in the above suit of \_\_\_\_\_ being debts due from you to you \_\_\_\_\_; It is ordered that you \_\_\_\_\_ be, and you are hereby, prohibited from receiving, and you \_\_\_\_\_ from making payment of, the said debt to any person or persons except the said \_\_\_\_\_.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .  
Judge.

**No. 34**PROHIBITORY ORDER AGAINST THE TRANSFER OR SHARES SOLD IN  
EXECUTION (O. 21, r. 79).*(Title)*

To

and \_\_\_\_\_, Secretary of  
Corporation.

WHEREAS \_\_\_\_\_ has become the purchaser  
at a public sale in execution of the decree, in the above suit, of  
certain shares in the above Corporation, that is to say, of

\_\_\_\_\_ standing in  
the name of you \_\_\_\_\_; It is  
ordered that you

be, and you are hereby, prohibited from making any transfer of the  
said shares to any person except the said \_\_\_\_\_, the  
purchaser aforesaid, or from receiving any dividends thereon; and  
you \_\_\_\_\_, Secretary of the said Corporation, from permitting any  
such transfer or making any such payment to any person except the  
said

the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of  
19 \_\_\_\_\_.

*Judge***No. 35**CERTIFICATE TO JUDGEMENT-DEBTOR AUTHORISING HIM TO  
MORTGAGE, LEASE OR SELL PROPERTY (O. 21, r. 83)*(Title)*

WHEREAS in execution of the decree passed in the above suit  
an order was made on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_,  
for the sale of the undermentioned property of the judgment-debtor  
\_\_\_\_\_, and whereas the Court has, on the  
application of the said judgment-debtor, postponed the said sale to  
enable him to raise the amount of the decree by mortgage; lease or  
private sale of the said property or of some part thereof:

This is to certify that the Court both hereby authorise the said  
judgment-debtor to make the proposed mortgage, lease or sale  
within a period of \_\_\_\_\_ from the date of this certificate;  
provided that all monies payable under such mortgage, lease or sale  
shall be paid into this Court and not to the said judgment-debtor.

*Description of property*

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of  
19 \_\_\_\_\_.

*Judge.*

**No. 36**

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE  
(O. 21, rr. 90,92)  
(Title)

To

WHEREAS the under mentioned property was sold on the day of 19 , in execution of the decree passed in the above-named suit, and whereas , the decree-holder [or judgment-debtor], has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [or fraud] in publishing [or conducting] the sale, namely that

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 , when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 .

*Description of property*

*Judge.*

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**No. 37**

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE  
(O. 21, rr. 90,92)  
(Title)

To

WHEREAS , the purchaser of the under-mentioned property sold on the day of 19 , in execution of the decree passed in the above named suit, has applied to this Court to set aside the sale of the said property on the ground that , the judgment-debtor, had no saleable interest therein :

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 , when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 .

*Description of property*

*Judge.*

**No. 38**

CERTIFICATE OF SALE OF LAND (O. 21, r. 94)

*(Title)*

THIS is to certify that \_\_\_\_\_ has been declared  
the purchaser at a sale by public auction on the \_\_\_\_\_ day  
of \_\_\_\_\_ 19\_\_\_\_, of \_\_\_\_\_  
in execution  
of decree in this suit, and that the said sale has been duly confirmed  
by this court.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*

**No. 39**ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE  
IN EXECUTION (O. 21, r. 95).*(Title)*

To

The Bailiff of the Court.

WHEREAS \_\_\_\_\_ has become  
the certified purchaser of \_\_\_\_\_  
at a sale in execution of decree in suit No. \_\_\_\_\_ of \_\_\_\_\_ 19\_\_\_\_  
; You are hereby ordered to put the said \_\_\_\_\_  
; the certified purchaser, as aforesaid, in possession of  
the same.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*

**No. 40**SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING  
EXECUTION OF DECREE (O. 21, r. 97)*(Title)*

To

WHEREAS \_\_\_\_\_, the  
decree-holder in the above suit, has complained to this Court that you  
have resisted (*or* obstructed) the officer charged with the execution  
of the warrant for possession :

You are hereby summoned to appear in this Court on the  
day of \_\_\_\_\_ 19\_\_\_\_ at \_\_\_\_\_ A.M., to answer the said  
complaint.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*

**No. 41**

WARRANT OF COMMITTAL (O. 21, r. 98)

(Title)

To

The Officer in Charge of the Jail at

WHEREAS the under mentioned property has been decreed to  
, the plaintiff in this suit, and where as the Court is satisfied that  
without any just cause resisted [*or* obstructed] and is still  
resisting [*or* obstructing] the said in obtaining possession  
of the property, and whereas the said has made  
application to this Court that the said be  
committed to the civil prison ;

You are hereby commanded and required to take and received  
the said into the civil prison and to keep him  
imprisoned therein for the period of days.

GIVEN under my hand and the seal of the Court, this  
day of 19 .

*Judge.*

**No. 42**

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND

(Section 72)

(Title)

To

, Collector of .

SIR,

In answer to your communication No. ,  
dated , representing that the sale in  
execution of the decree in this suit of  
land situate within your district is objectionable, I have the honour to  
inform you that you are authorised to make provision for the  
satisfaction of the said decree in the manner recommended by you.

I have the honour to be,

SIR,

Your obedient Servant.

*Judge.*

**APPENDIX F**  
**SUPPLEMENTAL PROCEEDINGS**

**No. 1**

WARRANT OF ARREST BEFORE JUDGMENT (O. 38, r.1)

(Title)

To

The Bailiff of the Court.

WHEREAS \_\_\_\_\_, the plaintiff in the above suit, claims the sum of Taka \_\_\_\_\_ as noted in the margin, \_\_\_\_\_ and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant \_\_\_\_\_ is about to \_\_\_\_\_ ;

Principal .. ..				These are to command you to demand and receive from the said _____ the sum Taka _____ as sufficient to satisfy the plaintiff's claim, and unless the said sum of Taka _____ is forthwith delivered to you by or on behalf of the said _____, to take the said
Interest .. ..				
Costs .. ..				
Total .. ..				

into custody, and to bring him before this Court, in order that he may show cause why he should not furnish security to the amount of Taka \_\_\_\_\_ for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_ .

*Judge.*

**No. 2**

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT (O. 38, r. 2)

(Title)

WHEREAS at the instance of \_\_\_\_\_, the plaintiff in the above suit, \_\_\_\_\_ the defendant, has been arrested and brought before the Court;

And where as on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security:

Therefore I \_\_\_\_\_ have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court,



that the said defendant shall appear 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 said suit; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, \_\_\_\_\_ (Signed).

Witnesses

- 1.
2.

No. 3

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE (O. 38, r. 3) (Title)

To

WHEREAS \_\_\_\_\_, who became surety on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, for your appearance in the above suit, has applied to this Court to be discharged from his obligation :

You are hereby summoned to appear in this Court in person on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ A. M., when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, \_\_\_\_\_ Judge.

No. 4

ORDER FOR COMMITMENT (O. 38, r. 4) (Title)

To

WHEREAS \_\_\_\_\_, plaintiff in this suit, has made application to the Court that security be taken for the appearance of \_\_\_\_\_, the defendant, to answer any judgment that may be passed against him in the suit ; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do ; it is ordered that the said defendant \_\_\_\_\_ be committed to the civil prison until the decision of the suit; or, if judgment be pronounced against him, until satisfaction of the decree.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, \_\_\_\_\_ Judge.

**No. 5**ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR  
SECURITY FOR FULFILLMENT OF DECREE (O. 38, r. 5)*(Title)*

To

The Bailiff of the Court.

WHEREAS \_\_\_\_\_ has proved to the satisfaction  
of the Court that the defendant in the above suit \_\_\_\_\_ ;

These are to command you to call upon the said defendant  
on or before the \_\_\_\_\_ day of 19\_\_\_\_, either to  
furnish security for the sum of Taka \_\_\_\_\_ to produce and  
place \_\_\_\_\_ at the disposal of this Court when required  
\_\_\_\_\_ or the value thereof, or such portion of the value as  
may be sufficient to satisfy any decree that may be passed against  
him ; or to appear and show cause why he should not furnish security  
; and you are further ordered to attach the said \_\_\_\_\_ and keep  
the same under safe and secure custody until the further order of the  
Court ; and you are further commanded to return this warrant on or  
before the \_\_\_\_\_ day of 19\_\_\_\_, with \_\_\_\_\_ an  
endorsement certifying the date on which and the manner in which it  
has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of 19\_\_\_\_,

*Judge.***No. 6**

## SECURITY FOR THE PRODUCTION OF PROPERTY (O. 38, r. 5)

*(Title)*

WHEREAS at the instance of \_\_\_\_\_, the plaintiff in the  
above suit \_\_\_\_\_, the defendant has been directed  
by the Court to furnish security in the sum of Taka \_\_\_\_\_ to  
produce and place at the disposal of the Court the property \_\_\_\_\_ specified  
in the schedule hereunto annexed ;

Therefore I \_\_\_\_\_ have voluntarily become surety  
and do hereby bind myself, my heirs and executors, to the said Court,  
that the said defendant shall produce and place at the disposal of the  
Court, when required, the property specified in the said schedule, or  
the value of the same, or such portion thereof as may be sufficient to  
satisfy the decree ; and in default of his so doing, I bind myself, my  
heirs and executors, to pay to the said Court, at its order, the said sum  
of Taka \_\_\_\_\_ or such sum not exceeding the said sum as the said  
Court may adjudge.

*Schedule*

Witness my hand at \_\_\_\_\_ this \_\_\_\_\_ day of  
19\_\_\_\_.

Witnesses.

- 1.
- 2.

*(Signed).*

**No. 7**

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY (O. 38, r. 6)

(Title)

To

The Bailiff of the Court.

WHEREAS \_\_\_\_\_, the plaintiff in this suit, has applied to the Court to call upon \_\_\_\_\_ the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said \_\_\_\_\_ to furnish such security, which he has failed to do ; These are to command you to attach \_\_\_\_\_, the property of the said \_\_\_\_\_, and keep the same under safe and secure custody until the further order of the Court ; and you are further commanded to return this warrant on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Judge

**No. 8**

TEMPORARY INJUNCTIONS (O. 39, r. 1)

(Title)

Upon motion made unto this Court by \_\_\_\_\_, pleader of [or Counsel for] the plaintiff A. B., and upon reading the petition of the said plaintiff in this matter filed [this day] [or the plaint filed in this suit on the \_\_\_\_\_ day of \_\_\_\_\_, or the written statement of the said plaintiff filed on the day of \_\_\_\_\_] and upon hearing the evidence of \_\_\_\_\_ and \_\_\_\_\_ in support thereof [if after notice and defendant not appearing: add, and also the evidence of \_\_\_\_\_ as to service of notice of this motion upon the defendant C. D.]; This Court do order than an injunction be awarded to restrain the defendant C. D., his servants, agents and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [or in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned], being No. 9, Oilmongers Street, Hindupur, in the Taluk of \_\_\_\_\_, and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Judge.

[Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:—]

to restrain the defendants and  
from parting without of the custody of them or any of them or endorsing assigning or negotiating the promissory note [or bill of exchange] in question, dated on or about the , etc., mentioned in the plaintiff's plaint [or petition] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

[In Copyright cases] to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing or vending a book, called , or any part thereof, until the, etc.

[Where part only of book is to be restrained]  
to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [or petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled

and also that part which is entitled  
[or which is contained in page to page  
both inclusive] until , etc.

[In Patent cases] to restrain the defendant C. D., his agents, servants and workmen, from making or vending any perforated bricks [or as the case may be] upon the principle of the inventions in the plaintiff's, plaint [or petition, etc., or written statement, etc.,] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [or as the case may be] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[In cases of Trade marks] to restrain the defendant C. D., his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [or as the case may be] described as or purporting to be blacking manufactured by the plaintiff A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint [or petition, etc.] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A. B., until the, etc.,

[To restrain a partner from in any way interfering in the business]

to restrain the defendant C. D., his agents and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill or exchange, note or written security in the name of the partnership-firm of B. and D., and from

contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. and D., or where by the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

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**No. 9**

APPOINTMENT OF A RECEIVER (O. 40, r. 1)

(Title)

To

WHEREAS \_\_\_\_\_ has been attached in execution of a decree passed in the above suit on the \_\_\_\_\_ day of 19\_\_\_\_, in favour of \_\_\_\_\_; You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on \_\_\_\_\_. You will be entitled to remuneration at the rate of \_\_\_\_\_ per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of 19\_\_\_\_.

*Judge.*

---

**No. 10**

BOND TO BE GIVEN BY RECEIVER (O. 40, r. 3)

(Title)

KNOW all men by these presents, that we, \_\_\_\_\_ and \_\_\_\_\_, are jointly and severally bound to \_\_\_\_\_ of the Court of \_\_\_\_\_ in Taka \_\_\_\_\_ to be paid to the said \_\_\_\_\_ or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Whereas a plaint has been filed in this Court by \_\_\_\_\_ against \_\_\_\_\_ for the purpose of (*here insert the object of suit*):

And whereas the said \_\_\_\_\_ has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immovable property and to get in the outstanding movable property of \_\_\_\_\_ in the said plaint named:

Now the condition of this obligation is such, that if the above-bounded shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immovable property, and in respect at the movable property, of the said at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court that directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remind in full force.

Signed and delivered by the above-bounded in the presence of .

*Note.*-If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

**APPENDIX G**  
**APPEAL, REFERENCE AND REVIEW**

**No. 1**

MEMORANDUM OF APPEAL (O. 41, r. 1)

(Title)

The above-named appeals to the Court at from the decree of in Suit No. of 19, dated the day of 19, and sets forth the following grounds of objection to the decree appealed from, namely :-

**No. 2**

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY  
EXECUTION OF DECREE (O. 41, r. 5).

(Title)

To This security bond on stay of execution of decree executed by witnesseth :-  
That , the plaintiff, in Suit No. of 19, having sued , the defendant in this Court and decree having been passed on the day of 19 in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the Court, the said appeal is still pending.

Now the plaintiff decree-holder having applied to execute the decree, the defendant has made an application praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Taka

, mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be confirmed or varied by the Appellate Court the said defendant shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day

of 19  
Schedule

(Signed)

Witnessed by

- 1.
- 2.

**No. 3**

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF APPEAL

(O. 41, r. 6)

(Title)

To

THIS security bond on stay of execution of decree executed by witnesseth :-

That , the plaintiff in Suit No. of 19 , having sued , the defendant, in this Court and a decree having been passed on the day of 19 in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the Court, the said appeal is still pending.

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Taka, mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day

of 19  
Schedule

(Signed)

Witnessed by

- 1.
- 2.

**No. 4**

SECURITY FOR COSTS OF APPEAL (O. 41, r. 10)

*(Title)*

To

THIS security bond for costs of appeal executed by  
witnesseth :-

This appellant has preferred an appeal from the decree in Suit No.        of 19       , against the respondent, and has been called upon to furnish security. Accordingly I, of my own free will, stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto annexed. I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant. I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this        day of        19       .

*Schedule**(Signed)*

Witnessed by.

- 1.
- 2.

**No. 5**

INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL (O. 41, r.

13)

*(Title)*

To

You are hereby directed to take notice that  
the        in the above suit, has preferred an appeal to this  
Court from the decree passed by you therein on the  
day of        19       .

You are requested to send with all practicable despatch all  
material papers in the suit.

Dated the        day of        19       .

*Judge.*



**No. 6**

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL (O. 41, r. 14)

(Title)

Appeal from the of the Court of  
dated the day of 19 .

*Respondent.*

TAKE notice that an appeal from the decree of in this case has been presented by and registered in this Court, and that the day of 19 , has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorised to act for you in this appeal, it will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 ,

*Judge.*

[*Note.*—If a stay of execution has been ordered, intimation should be given of the fact on this notice.]

---

**No. 7**

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE APPEAL BUT JOINED BY THE COURT AS A RESPONDENT (O. 41, r. 20)

(Title)

To

WHEREAS you were a party in suit No. of 19 , in the Court of , and whereas the has preferred an appeal to this Court from the decree passed against him in the said suit and it appears to the Court that you are interested in the result of the said appeal :

This is to give you notice that this Court has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the day of 19 , at A. M. If no appearance is made on your behalf on the said day and at the said hour the appeal will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 ,

*Judge.*

**No. 8**

MEMORANDUM OF CROSS OBJECTION (O. 41, r. 22)

*(Title)*

WHEREAS the \_\_\_\_\_ has preferred an appeal to the \_\_\_\_\_ Court at \_\_\_\_\_ from the decree of \_\_\_\_\_ in Suit No. \_\_\_\_\_ of 19 \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, and whereas notice of the day fixed for hearing the appeal was served on the \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, the \_\_\_\_\_ files this memorandum of cross objection under rule 22 of Order XLI of the Code of Civil Procedure, 1908, and sets forth the following grounds of objection to the decree appealed from, namely :-

**No. 9**

DECREE IN APPEAL (O. 41, r. 35)

*(Title)*

Appeal No. \_\_\_\_\_ of 19 \_\_\_\_\_ from the decree of the Court of \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_

19 \_\_\_\_\_ . Memorandum of Appeal

*Plaintiff.*  
*Defendant.*

The \_\_\_\_\_ above-named appeals to the \_\_\_\_\_ Court at \_\_\_\_\_ from the decree of \_\_\_\_\_ in the above suit, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, for the following reasons, namely :-

This appeal coming on for hearing on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, before \_\_\_\_\_, in the presence of \_\_\_\_\_ for the appellant and of \_\_\_\_\_ for the respondent, it is ordered-

The costs of this appeal, as detailed below, amounting to Taka \_\_\_\_\_, are to be paid by \_\_\_\_\_. The costs of the original suit are to be paid by \_\_\_\_\_.

GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

*Judge.*

*Cost of Appeal.*

Appellant	Amount		Respondent	Amount	
1. Stamp for memorandum of appeal.	Taka	<sup>1</sup> [* * *] <sup>1</sup> [Poisha]	Stamp for power	Taka	<sup>1</sup> [* * *] <sup>1</sup> [Poisha]
2. Do. for power.			Do. for petition.		
3. Service of processes.			Service of processes.		
4. Pleader's fee on Taka			Pleader's fee on Taka		
Total ....			Total ....		

**No. 10**APPLICATION TO APPEAL *in forma pauperis* (O. 44, r. 1)  
(Title)

I the above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the moveable and immovable property belonging to me with the estimated value thereof.

Dated the            day of            19            .

(Signed).

*Note.*—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.

**No. 11**NOTICE OF APPEAL *in forma pauperis* (O. 44, r. 1)  
(Title)

WHEREAS the above-named            has applied to be allowed to appeal as a pauper from the decree in the above suit dated the day of            19            and whereas the            day of

19            has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date.

GIVEN under my hand and the seal of the Court, this            day of  
19            .  
*Judge.*

<sup>1</sup> The space with heading "a" was omitted and the word "Poisha" was substituted, for letter "p" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

**No. 12**

NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF APPEAL TO THE  
<sup>1</sup>[APPELLATE DIVISION] SHOULD NOT BE GRANTED (O. 45, r. 3)  
 (Title)

To

TAKE notice that \_\_\_\_\_ has applied to this Court for a certificate that as regards amount or value and nature the above case fulfils the requirements of section 110 of the Code of Civil procedure, 1908, or that it is otherwise a fit one for appeal to the <sup>1</sup>[Appellate Division].

The \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ is fixed for you to show cause why the Court should not grant the certificate asked for.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .  
 Registrar.

**No. 13**

NOTICE TO RESPONDENT OF ADMISSION OF APPEAL TO THE  
<sup>1</sup>[Appellate Division] (O. 45, r. 8)  
 (Title)

To

WHEREAS \_\_\_\_\_, the \_\_\_\_\_ in the above case, has furnished the security and made the deposit required by Order XLV, rule 7, of the Code of Civil Procedure, 1908:

Take notice that the appeal of the said \_\_\_\_\_ to the <sup>1</sup>[Appellate Division] has been admitted on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .  
 Registrar.

**No. 14**

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED  
 (O. 47, r. 4)  
 (Title)

To

TAKE notice that \_\_\_\_\_ has applied this Court for a review of its decree passed on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in the above case. The \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, is fixed for you to show cause why the Court should not grant a review of its decree in this case.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .  
 Judge.

<sup>1</sup> 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).

**APPENDIX H  
MISCELLANEOUS**

**No. 1**

AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED (O. 14, r. 6)

*(Title)*

WHEREAS we, the parties in the above suit, are agreed as to the question of fact [*or of law*] to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the            day of            19    , and filed as Exhibit    in the said suit, is or is not beyond the statute of limitation (*or state the point at issue whatever it may be*) :

We therefore severally bind ourselves that, upon the finding of the Court in the negative [*or affirmative*] of such issue,            will pay to the said            the sum of Taka            (*or such sum as the Court shall hold to be due thereon*), and I, the said            , will accept the said sum of Taka            (*or such sum as the Court shall hold to be due*) in full satisfaction of my claim on the bond aforesaid [*or that upon such finding I, the said            , will do or abstain from doing, etc., etc.*].

*Plaintiff  
Defendant*

Witnesses :-

- 1.
- 2.

Dated the            day of            19    .

**No. 2**

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL (Section 24)

In the Court of the District Judge of            No.            of            19

To

WHEREAS an application dated the            day of            19    has been made to this Court by the            in Suit No.            of 19    now pending in the Court of the            at            , in which            is plaintiff and            is defendant, for the transfer of the suit for trial to the Court of            the            at            :-

You are hereby informed that the            day of            19    has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

GIVEN under my hand and the seal of the Court, this day of            19    .

*Judge.*

**No. 3**

## NOTICE OF PAYMENT INTO COURT (O. 24, r. 2)

*(Title)*

TAKE notice that the defendant has paid into Court Taka and says that that sum is sufficient to satisfy the plaintiff's claim in full.

X. Y., *Pleader for the defendant.*

To Z., *Pleader for the plaintiff.*

**No. 4**

## NOTICE TO SHOW CAUSE (GENERAL FORM)

*(Title)*

To

WHEREAS the above-named has made application to this Court that

You are hereby warned to appear in this Court in person or by a pleader duly instructed on the day of 19, at o'clock in the forenoon, to show cause against the application, failing wherein, the said application will be heard and determined *ex parte*.

GIVEN under my hand and the seal of the Court, this day of 19.

*Judge.*

**No. 5**LIST OF DOCUMENTS PRODUCED BY PLAINTIFF / DEFENDENT (O. 13, r. 1.)*(Title)*

No.	Description of Document	Date, if any, which the document bears	Signature of party or pleader
1	2	3	4

**No. 6**

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATIONS OF A WITNESS ABOUT TO LEAVE THE JURISDICTION (O. 18, r. 16)

(Title)

To

Plaintiff (or defendant).

WHEREAS in the above suit application has been made to the Court by that the examination of , a witness required by the said , in the said suit may be taken immediately ; and it has been shown to the Court's satisfaction that the said witness is about to leave the Court's Jurisdiction (or any other good and sufficient cause to be Stated) :

TAKE notice that the examination of the said witness will be taken by the Court on the day of 19 .

Dated the day of 19 .  
Judge.

**No. 7**

COMMISSION TO EXAMINE ABSENT WITNESS (O. 26, rr. 4, 18)

(Title)

To

WHEREAS the evidence of is required by the in the above suit ; and whereas ; you are requested to take the evidence on interrogatories [or viva voce] of such witness , and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified, and you are further requested to made return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of Taka , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

**No. 8**

LETTER OF REQUEST (O. 26, r. 5)

(Title)

(Heading :-To the President and Judges of, etc., etc., or as the case may be)

WHEREAS a suit is now pending in the in which A. B. is plaintiff and C. D. is defendant ; And in the said suit the plaintiff claims.

*(Abstract of claim)*

An whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

*E. F.*, of  
*G. H.*, of  
*I. J.*, of

and

And it appearing that such witnesses are resident within the Jurisdiction of your honourable Court ;

Now I \_\_\_\_\_, as the \_\_\_\_\_ of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and judges of the said \_\_\_\_\_, or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (*or viva voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

*(Note.—If the request is directed to a Foreign Court, the words "through the Government for transmission" should be inserted after the words "other witnesses" in the last line of this form.)*

**No. 9**

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE  
ACCOUNTS (O. 26, rr. 9, 11)

*(Title)*

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for \_\_\_\_\_ should be issued; You are hereby appointed Commissioner for the purpose of

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Taka \_\_\_\_\_, being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 19\_\_\_\_. \_\_\_\_\_  
Judge.



**No. 10**

COMMISSION TO MAKE A PARTITION (O. 26, r. 13)

*(Title)*

To

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_; You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and Judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorised to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Taka \_\_\_\_\_, being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*

**No. 11**

NOTICE TO MINOR DEFENDANT AND GUARDIAN (O. 32, r. 3)

*(Title)*

To

*Minor Defendant.  
Natural Guardian.*

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant, you, the said minor, and you (1) \_\_\_\_\_, are hereby required to take notice that unless within \_\_\_\_\_ days from the service upon you of this notice, an application is made to this Court for the appointment of you (1) \_\_\_\_\_ or of some friend of you, the minor, to act as guardian for the suit, the Court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*

**No. 12**NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING EVIDENCE  
OF PAUPERISM (O. 33, r. 6)

(Title)

To

WHEREAS \_\_\_\_\_ has applied to this Court or permission to institute a suit against *in forma pauperis* under Order XXXIII of the Code of Civil Procedure, 1908 ; and whereas the Court sees no reason to reject the application ; and whereas the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ has been fixed 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 :

Notice is hereby given to you under rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove the pauperism of the applicant, you may do so on appearing in this Court on the said \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .

GIVEN under my hand and the seal of the Court, this day of \_\_\_\_\_ 19\_\_\_\_ .

*Judge.***No. 13**NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE  
(Section 145)

(Title)

To

WHEREAS you \_\_\_\_\_ did on \_\_\_\_\_ become liable as surety for the performance of any decree which might be passed against the said \_\_\_\_\_ defendant in the above suit ; and whereas a decree was passed on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ against the said defendant for the payment of \_\_\_\_\_ , and whereas application has been made for execution of the said decree against you :

Take notice that you are hereby required on or before the day of \_\_\_\_\_ 19\_\_\_\_ to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application.

GIVEN under my hand and the seal of the Court, this day of \_\_\_\_\_ 19\_\_\_\_ .

*Judge.*

**No. 14**  
**REGISTER OF CIVIL SUITS (O.4, r.2)**  
 \_\_\_\_\_ of \_\_\_\_\_ at \_\_\_\_\_  
**REGISTER OF CIVIL SUITS IN THE YEAR 19 .**

Plaintiff	Place of residence	
	Description	
	Name	
Defendant	Place of residence	
	Description	
	Name	
Claim	When the cause of action accrued	
	Amount or value	
	Particulars	
Appearance	Defendant	
	Plaintiff	
	Day for parties to appear	
Judgment	For what, or amount	
	For whom	
	Date	
Appeal	Judgment in appeal	
	Date of decision of appeal	
Execution	Amount of costs	
	For what and amount, if money	
	Against whom	
	Date of order	
	Date of application	
Return of Execution	Minute of other Return than payment or Arrest, and date of every Return.	
	Arrested	
	Amount paid into Court	
Number of suit		
Date of presentation of plaint		

Note- Where there are numerous plaintiffs, or numerous defendants, the name of the first plaintiff only, or the first defendant only, as the case may be, need be entered in the register.

**No. 15**  
**REGISTER OF APPEALS (O.41,r.9)**

**COURT (OR HIGH COURT DIVISION) AT**  
**REGISTER OF APPEALS FROM DECREES IN THE YEAR 19 .**

Judgment	For what or amount	
	Confirmed, reversed or varied.	
	Date	
Appearance	Respondent	
	Appellant	
	Day for parties to appear	
Decree appealed from	Amount of value	
	Particulars	
	Number of Original Suit	
	Of what Court	
Respondent	Place of residence	
	Description	
	Name	
Appellant	Place of residence	
	Description	
	Name	
Number of appeal		
Date of memorandum		

THE SECOND SCHEDULE. —[Repealed by the Arbitration Act, 1940 (Act No. X of 1940), section 49 and Third Schedule.]

THE THIRD SCHEDULE

(See s. 69)

EXECUTION OF DECREES BY COLLECTORS

1. Where the execution of a decree has been transferred to the Collector under section 68, he may— Powers of Collector

- (a) Proceed as the Court would proceed when the sale of immovable property is postponed in order to enable the judgment-debtor to raise the amount of the decree ; or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold ; or
- (c) sell the property ordered to be sold or so much thereof as may be necessary.

2. Where the execution of a decree, not being a decree ordering the sale of immovable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immovable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immovable property, may proceed as hereinafter provided. Procedure of Collector in special cases

3.(1) In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance and calling upon— Notice to be given to decree holders and to persons having claims on property

- (a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immovable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder ;

- (b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

(2) Such notice shall be published by being affixed on a conspicuous part of the Court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit; and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

Amount of decrees for payment of money to be ascertained, and immovable property available for their satisfaction

4.(1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immovable property, and may, from time to time, adjourn such hearing and inquiry.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immovable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision.

5. The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4, draw up a statement specifying the circumstances of the judgment-debtor and of his immovable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court ; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector.

Where District Court may issue notices and hold inquiry

6. The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree.

Effect of decision of Court as to dispute

7.(1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may,—

Scheme for liquidation of decrees for payment of money

- (a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property ; or
- (b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale)—
  - (i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property ; or
  - (ii) by mortgaging the whole or any part of such property ; or
  - (iii) by selling part of such property ; or
  - (iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale ; or
  - (v) partly by one of such modes, and partly by another or others of such modes.

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner.

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sale any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector purposes to deal under this clause, he may institute suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceedings under this paragraph the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Government.

Recovery of  
balance (if  
any) after  
letting or  
management

**8.** Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to made up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property ; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

Collector to  
render  
accounts to  
Court

**9.(1)** The Collector shall, from time to time, render to the Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.



(2) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

(3) The balance shall be applied by the Court—

- (a) in providing for the maintenance of such members of the judgment's debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each members as the Court thinks fit; and
- (b) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immovable property, or otherwise as the Court may under section 73 direct; or
- (c) where the Collector has proceeded under paragraph 2,—
  - (i) in keeping down the interest on encumbrances on the property;
  - (ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit; and
  - (iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-debtor or such other person as the Court directs.

Sales how to be conducted

**10.** Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

- (a) fix a reasonable reserved price for each lot;
- (b) adjourn the sale for reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property;
- (c) by in the property offered for sale, and re-sell the same by the public auction or private contract, as he thinks fit.

Restrictions as to alienation by judgment debtor or his representative, and prosecution of remedies by decree-holders

**11.(1)** So long as the Collector can exercise or perform in respect of the judgment-debtor's immovable property, or any part thereof, any of the powers or duties conferred or imposed on him by paragraphs 1 to 10, the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money.

(2) During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7.

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived.

Provision where property is in several districts

**12.** Where the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by paragraphs 1 to 10 shall be exercised and performed by such one of the Collectors of the said districts as the Government may by general rule or special order direct.

Powers of Collector to compel attendance and production

**13.** In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

**THE FORTH SCHEDULE**

(See section 155)

**ENACTMENTS AMENDED**

1	2	3	4
Year	No.	Short title	Amendment.
1870	VII	The Court-fees Act, 1870.	<p>In article 1 of Schedule I, after the word "plaint" the words "written statement pleading a set-off or counter-claim" and after the word "Act" the words "or of cross-objection" shall be inserted.</p> <p>From article 11 of Schedule II the words "from and order rejecting a plaint or" shall be omitted.</p> <p>For the entry in the first column of Schedule II relating to article 19 the following entry shall be substituted, namely :- "Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908".</p>

THE FIFTH SCHEDULE. – [Repealed by the Second Repealing and Amending Act, 1914 (XVII of 1914), section 3 and Second Schedule.]

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