

G. R. & C.O (Civil)

Vol. – III

**SPECIAL RULES
RELATING TO ACTS
OTHER THAN THE CODE
OF CIVIL PROCEDURE
AND THE COURT-FEES
ACT**

**SPECIAL RULES RELATING TO ACTS OTHER THAN
THE CODE OF CIVIL PROCEDURE AND THE
COURT-FEES ACT
CHAPTER - I**

The Indian Succession Act, 1925

(Act XXXIX of 1925)

1. In uncontested proceedings under the Indian Succession Act and Guardians & Wards Act, it shall be competent to the Court exercising jurisdiction therein to permit or direct, except when otherwise provided by any law or rule for the time being in force, that any particular fact or facts may be proved or evidence upon any application may be given by affidavit.

NOTE - When a District Delegate, acting under Section 228 of the Indian Succession Act, 1925 returns the petition and documents filed therewith to the person by whom the application was made he should forward to the District Judge and not to the Record Room, Such other papers in connection with the application as may have been produced before him.

**The Guardians & Wards Act, 1890 (Act
VII of 1890)**

The following rules have been made by the High Court under Section 50 of the Guardians & Wards Act, 1890 (Act VIII of 1890).

(1) The application made under Section 8 of the Act shall, in addition to the particulars required by Section 10 state whether the minor is entitled to any property absolutely or subject to the rights or interest of any other person, and the encumbrances if any, to which the property is subject; and shall specify all persons of the same degree or relationship as, or of nearer degree than, the proposed guardian, and where a female is proposed as guardian the nearest male relation of the minor.

(2) Where the father of the minor is living and is not proposed as guardian, the application shall also state any facts relied on as showing that he is unfit to act as guardian of the minor, or that he consents to the application.

Whenever the petition made under Section 10 of the Act states that the property of the minor consists of land or any interest in land a copy of the petition shall be sent free of charge to the Collector of the district in which such property or any part of it is situate.

(3) The notice required by Section 11 of the Act shall be in Form (P) 59.

(4) Unless for reasons to be recorded, the Court excuses him from giving security, a person appointed or declared to be a guardian shall give a bond as nearly as may be in Form (M) 14. Such bond,

-unless it be otherwise ordered by the Court, shall be for the amount or value of the movable property, and twice the amount of the annual rents, profits or other income of the movable and immovable property to be received or accounted for by the guardian.

(5) Where security is required, the Court shall fix a time within which such security shall be furnished; and the order of appointment or declaration shall be made conditional on the furnishing of such security.

(6) At the time of the appointment or declaration of a guardian, the Court shall require an inventory of all the property of the Ward and of all debts due from the estate to be furnished to the Court within six months under Section 34 (b) of the Act unless for reasons to be recorded it dispenses with the same and shall fix a date for the inventory to be brought to the Court for such further orders thereon as may be deemed necessary.

(7) Any appreciable increment to or diminution of the property of the Ward shall be reported immediately by the guardian to the Court and the Court shall cause the same to be noted in the inventory produced under Rule (6).

(8) The Court shall direct the guardian to keep such accounts as may be deemed necessary having regard to the extent and circumstances of the estate unless the Court, for reasons to be recorded, dispenses with accounts.

(9) The accounts to be kept by the guardian shall, unless the District Judge otherwise directs, be for the year beginning with the 1st April and ending with the 31st March.

The Court shall require the guardian to submit within one month after the expiry of the account year in each year after the date of his appointment copies of such accounts as have been required under Rule (8) to be kept by him during the preceding year; provided that the Court may in all cases call for the original accounts at any time it thinks fit to do.

(10) Accounts filed by the guardian shall be exhibited and preserved with the record of the application and shall be open to inspection with the permission of the Court by persons legitimately interested in the same on payment of a fee of one rupee to be paid by means of a Court-fee stamp to be affixed to the application for inspection.

(11) An application for leave to deal with immovable property of a ward by way of sale, mortgage, lease or otherwise, shall state concisely the substance of the order prayed for, the value of the property proposed to be dealt with and the necessity or advantage of the proposed disposition of the property and shall be supported by an affidavit of the guardian.

(12) An application for leave to sell or mortgage immovable property of a ward for the discharge of debts or other liabilities of the ward, shall be accompanied by a statement in Form No.(M) 13 of the movable and immovable properties of the minor and of all debts due from the estate unless such statement has already been delivered to the Court –

by the guardian under Section 34 (b) of the Act. The particulars of each debt should be separately specified.

(13) When the guardian applies for an order of the Court to do any of the acts mentioned in Section 28 and 29 of the Act and the Court considers it necessary to call upon the Collector or a Subordinate Court for a report as to the necessity or expediency of the proposed act, "the guardian shall deposit as the costs of the inquiry such sum as may be fixed by the Court. If it is found that the application was not made in good faith the guardian shall be required to refund the cost of the application and inquiry to the estate within such time as may be allowed by the Court.

(14) Moneys belonging to wards shall not, without the leave of the District Court, be invested in securities other than those mentioned in Clause (a), (b), (bb), (c) and (d) of Section 20 of the Indian Trusts Act, 1882 (II of 1882), or deposited in any bank other than a Government Saving Bank.

(15) The accounts of Wards estates of which the annual income is Rs.4,000 or more shall ordinarily be audited by the Examiner of Local Accounts, Orissa, provided that where in the opinion of the Court, for reasons to be recorded in writing, exceptional circumstances render such course advisable. They may in the alternative, with the previous sanction of the High Court be audited by persons who are holders of certificates granted by Government under Section 377 of the Indian Companies Act, 1956 or who are members of any institution or association the members of which have been declared under that Section to be eligible to act as auditors of companies throughout India.

(16) The accounts of wards estates of which the annual income is below Rs.4,000 will be audited by the Sarishtadar or any other officer, judicial or administrative subordinate to the District Judge, whom the latter may appoint.

When the audit is made by a ministerial officer of the Court the District Judge may, in exceptional cases of special difficulty, and provided it has been necessary to do the work outside office hours, sanction a small remuneration to the ministerial officer concerned, out of the funds of the estate.

(17) Unless otherwise directed by the Court for reasons to be recorded in writing, the accounts of Wards estates shall be audited annually or once in two years according as the annual income thereof does or does not exceed Rs.10,000.

**The Land Registration Act, 1876
(Bengal Act VIII of 1876)**

1. When an order under Section 32 of Bengal Act VII of 1876 directing the transfer of proprietary possession to be registered in the Register of the Collector of district, is passed by any Civil Court the Presiding Officer of such Court shall send a copy of his order to the-

Collector, with a view to such transfer being registered in the Collectorate Register.

* * *

The Orissa Court of Wards Act, 1947

1. Officers presiding in the Civil Courts should send under cover to the Collector, for transmission to the Court of Wards, all applications addressed to such Court under Section 10, of the Orissa Court of Wards Act, 1947 asking it to take charge of the properties of minors.

The Provincial Small Cause Courts Act, 1887

(Act IX of 1887)

1. The following Rules of Practice shall be observed in Courts of Small Causes :-

(1) The summons shall ordinarily be served on the defendant ten clear days before the day on which the Court shall be held at which the cause is to be tried, unless the Court shall otherwise order; but a summons may be made returnable at a longer or a shorter date in the discretion of the Court, with reference to distance or to any other cause.

(2) The cause of action shall be transcribed from the plaint into the cause-sheet [Form No.(J)15] to be attached to the record immediately before the plaint.

(3) The substance of the evidence, the judgment, and the decree shall be entered in the cause-sheet referred to above.

(4) In a case in which the defendant has moved the Court for a review of judgment, and the Court is of opinion that such review should be granted, the date for hearing shall be fixed within seven days, unless the Court shall for special reason fix a later date.

The Indian Stamp Act, 1899 (Act II of 1899)

1. When a Judicial Officer sees reason to doubt the genuineness of a stamp filed before him, the stamp should be forwarded to the Collector of the District, who will examine it and satisfy himself if possible, as to its character, reporting the result to the officer sending it. Care should be taken to retain an examined copy of any document bearing a stamp which may be forwarded to the Collector under the above orders.

2. In all cases in which the Civil Courts find any document which comes before them to have been stamped after its execution in contravention of law, they should give a copy of their judgment to the Government Pleader with a view to the prosecution, if necessary by the Revenue Authorities of the parties concerned in such after stamping.

3. When submitting a reference to the High Court under Section 60 of the Stamp Act, the-District Judge shall forward a copy of the same to the Superintendent and Remembrancer of Legal Affairs together-

with an expression of opinion as to whether that officer should engage Counsel or pleader to argue the matter before the High Court.

* * *

**The Indian Registration Act, 1908 (Act
XVI of 1908)**

1. In any case in which a registered document is discredited by the Judgment of a Court on grounds connected with registration, such as false personation, forgery, want of execution, presentation or admission of execution beyond the statutory period, minority idiocy or lunacy of the executant, such Court shall send a copy of its judgment to the District Registrar within whose jurisdiction the instrument was registered.

* * *

**The Indian Lunacy Act, 1912 (IV
of 1912)**

1. When a person has been adjudged by a Civil Court to be a lunatic and the Court is satisfied that the lunatic is a proper person to be detained in Lunatic 'Asylum, it shall obtain and forward with such person a certificate from the Medical Officer with whose assistance the person was so adjudged and a medical history sheet of the lunatic in Form No. (M) 18.

**The Administrator General Act, 1963
(Act 45 of 1963)**

1. In exercise of the powers conferred by Section 56 and 61 of the Administrators-General Act, 1963 (Act 45 of 1963) and in supersession of the notification of the Government of India in the Home Department (Judicial) No.620/32-R, dated the 25th July 1932, the Central Government hereby directs that where a subject of a state specified in the schedule given below dies in the territories to which the said Act extends and it appears that there is no one in the said territories other than the Administrator-General entitled to apply to a Court competent jurisdiction for Letters of administration of the estate of the deceased, Letters of administration shall, on the application to such Court of any consular officer of such state be granted to such consular officer on such terms and conditions as the Court may, subject to the following rules, think fit to impose namely :

- I. Where the deceased has not left in India any known heirs or testamentary executors, by him appointed, the local authorities, if any, in possession of the property of the deceased, shall at once communicate the circumstances to the nearest consular officer of the state of which the deceased was a subject in order that the necessary information may be immediately forwarded to persons interested.

- II. Such consular officer shall have the right to appear, personally or by delegate, in all proceedings on behalf of the absent heirs or creditors of the deceased until they are otherwise represented.

SCHEDULE

1. Afghanistan
2. Argentina
3. Czechoslovakia
4. Denmark
5. Iran
6. Iraq
7. Poland
8. United States of America.

The Provincial Insolvency Act, 1920 (V of 1920)

I. The following rules may be cited as the Provincial Insolvency Rules :-

(1) Every insolvency petition shall be entered in the Registrar of insolvency petitions in Form No.(R) 2-A.

(2) All insolvency proceedings may, at such time and subject to such restrictions as the District Judge may prescribe, be inspected by the Receiver, the debtor and any creditor who had proved or any legal representatives on their behalf.

(2-A) (i) The insolvency notice to be given under Section 6(2) of the Act shall be Form No.(P) 65-A.

(ii) The notice shall state-

(a) The name and address of the creditor (s)

(b) the name and address of the debtor decree (s) or order (s) for payment of money on which the creditors or creditor's claim are based with particulars thereof, *viz.*, the number of the suit or proceeding in which the decree (s) or order (s) has/have been made the date thereof and the amount as claimed due there under;

(c) the aggregate amount due to the creditor (s) (in case there are more than one decree or order); the fact that the decree (s) order (s) has/have become final and that the execution thereof has not been stayed;

(d) particulars of decree (s) or order (s) *viz.* the number of the suit or proceeding in which the decree (s) or order (s) has/have been made, the date thereof and the amount due thereunder to such creditor (s).

(e) In case there are more than one decree or order aggregate amount due thereunder to the Creditor (S) ;

(f) the date (which shall not be less than one month from the date of the service of the notice) before which compliance with the requirements of the notice is asked for.

(iii) The notice shall require the debtor to pay to the creditor (s) the amount claimed or to furnish security for the payment of the amount to the satisfaction of the creditor(s) or his/ their agent (s).

(iv) Service of insolvency notice shall be personal. Notice shall be served in the manner provided in Rule 9 to 19 of order V of the Code of Civil Procedure or by the registered post.

(v) If the notice is refused, or it is returned unserved and the Court is satisfied that the debtor is keeping out of the way for the purpose of avoiding service, it shall be published in a local daily newspaper and such publication shall be deemed to be sufficient service of notice.

(vi) Any person served with an insolvency notice may within the period allowed for compliance with that notice, apply to the Court to set aside the insolvency notice on any of the grounds specified in Sub-section (5) of Section 6 of the Act.

(vii) Where on application to set aside the insolvency notice has been made and it cannot be disposed of until after the expiry of the period specified in the notice as the day on which the act of insolvency will be complete, no act of insolvency shall be deemed to have been committed under the notice until the application shall be disposed of.

NOTICE :- (3) Whenever publication of any notice or other matter is required by the Act, to be made in an *official Gazette*, a memorandum referring to and giving the date on which such advertisement appeared, shall be filed with the record and noted in the order sheet.

(4) Notice of an order fixing the date of the hearing of a petition under Section 19(1) shall be forwarded by registered post to each creditor to the address given in the petition. Such notice where the Court so directs, may, in addition, also be published in the local *official Gazette* or in some selected newspapers, or in both. The same procedure shall be followed in respect of notices of the date for consideration of a proposal for composition or scheme of arrangement under Section 38(i) .

(5) Notice of an order of adjudication under Section 39 is required by the Act to be published in the local *official Gazette*. The Court may also order that it should be published in such local newspapers as it may direct. When the debtor is a Government servant, a copy of the order shall be sent to the head of the office in which he is employed. The same procedure shall be followed in regard to notices of orders annulling an adjudication under Section 37 (2).

(6) The notice to be given by the Court under Section 50 shall be served on the creditor or his pleader and shall be sent through the post by registered letter.

(7) The notice to be issued by the Receiver under Section 64 before the declaration of a final dividend to the persons who claims to be creditors, have been notified, but not proved, shall be sent through the post by registered letter.

(8) Notice of the date of hearing of an application for discharge under Section 41 shall be published in the local *official Gazette* or in such local newspapers as the Judge may direct, and copies shall be sent by registered post to all creditors whether they have proved or not .

(9) A certificate of an officer of the Court or of an official Receiver, or an affidavit by a Receiver that any of the notices referred to in the preceding rules has been duly posted accompanied by the post office receipt, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

(10) The Court may instead of or in addition to forwarding a notice by registered post under the foregoing rules cause it to be served in the manner prescribed for the service of summons.

(11) In addition to the prescribed methods of publication any notice may be published otherwise in such manner as the Court may direct, for instance, by affixing copies in the Court house or by beat of drum in the village in which the insolvent resides.

Receivers

(12) Every appointment of a Receiver shall be by order in writing signed by the Court. Copies of this order sealed with the seal of the Court should be served on the debtor and forwarded to the person appointed.

(13) (i) A Court when fixing the remuneration of a Receiver should, as a rule, direct it to be in the nature of a commission or percentage of which one part should be payable on the amount realized after deducting and sums paid to secured Creditors, out of the proceeds of their securities and the other part on the amount distributed in dividends.

(ii) When a Receiver realizes the security of a secured Creditor, the Court may direct additional remuneration to be paid to him with reference to the amount of work which he has done and the benefit resulting to the Creditors.

(14) The Receiver shall keep a Cash-Book and such books and other papers as to give a correct view of his administration of the estate, and shall submit his accounts at such times and in such forms as Court may direct. Such accounts shall be audited by such person or persons as the Court may direct. The costs of the audit shall be fixed by the Court, and shall be paid out of the estate.

(15) (Any creditor who has proved his debt may apply to the Court for a copy of the Receiver's accounts for any part thereof) relating-

to the estate as shown by the cash book up to date, and shall be entitled to such copy on payment of the charges laid down in rules of this Court regarding the grant of copies.

(15) (A) The receiver shall keep a record of his proceedings and shall state in it his reasons for all important acts and decisions. Any person affected by any such act or decision shall be entitled to a copy of the proceedings relating thereto on payment of the charges laid down in the rules of this Court regarding the grant of copies.

(16) In any case in which a meeting of Creditors is necessary and in any case in which the debtor proposes a composition or scheme under Section 38, the Receiver shall give seven days, notice to the debtor and every Creditor of the time and place, appointed for each meeting. Such notices shall be served by registered post.

(16) (A) If on the expiry of one year after the date of the order of adjudication the Receiver has not been able to realize all the property of the insolvent, he shall refer the case to the Court for decision under Section 64 of the Act whether as much has been realized as can be realised without needlessly protracting the receivership.

Proof of Debts

(17) A creditor's proof should be in Form No.(M) 27 with such variations as circumstances may require.

(18) In any case in which it shall appear from the debtor's statement that there are numerous claims for wages by workmen and others employed by the debtors, it shall be sufficient. If one proof for all such claims is made either by the debtor or by some other person on behalf of all such creditors. Such proof should be in Form No.(M) 28.

Procedure where the Debtor is a Firm

(19) Where any notice, declaration, petition or other document requiring attestation is signed by a firm of creditors or debtors in the firm name, the partner signing for the firm shall also add his own signature, *e.g.*, "Brown & Co., by James Green, a partner in the said firm."

(20) Any notice or petition for which personal service is necessary, shall be deemed to be duly served on all the members of a firm, if it is served at the principal place of business of the firm within the jurisdiction of the Court, on any one of the partners, or upon any person having at the time of service the control or management of the partnership business there .

(21) The provisions of the last proceeding rule shall, so far as the nature of the case will admit, apply in the case of any person carrying on business within the jurisdiction in the name of style other than his own.

(22) Where a firm of debtors files an insolvency petition the same shall contain the names in full of the individual partners, and if such petition is signed in the firm name the petition shall be accompanied by an affidavit made by the partners who signs the petition showing that all the partners concur in the filing of the same.

(23) An adjudication order made against a firm shall operate as if it were an adjudication order made against each of the persons who at the date of the order is a partner in the firm.

(24) In cases of partnership the debtors shall submit a schedule of their partnership affairs, and each debtor shall submit a schedule of their partnership affairs, and each debtor shall submit a schedule of his separate affairs.

(25) The joint creditors, and each set of separate creditors may severally accept compositions or schemes of arrangement. So far as circumstances will allow, a proposal accepted by joint creditors may be approved in the prescribed manner, notwithstanding that the proposals or proposal of some or one of the debtors made to their or his separate creditors may not be accepted.

(26) Where proposals for compositions or schemes are made by a firm and by the partners therein individually, the proposals made to the joint creditors shall be considered and voted upon by them apart from every set of separate creditors and the proposal made to each set of creditors shall be considered and voted upon by such separate set of creditors apart from all other creditors. Such proposals may vary in character and amount. Where a composition or scheme is approved, the adjudication order shall be annulled only so far as it relates to the state, the creditors of which have confirmed the composition or scheme.

(27) If any two or more of the members of a partnership constitute a separate and independent firm, the creditors of such last mentioned firm shall be deemed to be a separate set of creditors, and to be on the same footing as the separate set of creditors of any individual members of the firm. And when any surplus shall arise upon the administration of the assets of such separate or independent firm, the same shall be carried over to the separate estates of the partners in such separate and independent firm according to their respective rights therein.

Sale of Immovable Property of Insolvent

(28) If no Receiver is appointed and the Court in exercise of its powers under Section 58 of the Act sells any immovable property of the insolvent, the deed of sale of the said property shall be prepared by the purchaser at his own cost, and shall be signed by the Presiding Officer of the Court.

Dividends

(29) The amount of the Dividend may, at the request and risk of the creditor, be transmitted to him by post.

(30) When an estate is ordered to be administered in a summary manner under Section 74 of the Act :

(i) There shall be no advertisement of any proceedings in the local government Gazettee or in a local newspaper.

(ii) The petition and all subsequent proceedings shall be endorsed "Summary case".

(iii) The notice of the hearing of the petition to the creditors shall be in Form No.(P) 65.

Costs

(31) All proceedings under the Act down to and including the making of an order of adjudication shall be at the cost of the partly prosecuting them, but when an order of adjudication has been made, the costs of the petitioning creditor including the costs of the publication of all gazette notices required by the Act or Rules which, by the Act or Rules, the petitioning creditor is required to pay shall be taxed and be payable out of the estate.

(32) Before making an order in an insolvency petition presented by a debtor, the Court may require the debtor to deposit in Court a sum sufficient to cover the costs of sending the prescribed notices of the hearing of petition and the costs of the publication of all gazette notices required by the Act or Rules which, by the Act or Rules, the debtor is required to pay.

(33) The cost of the publication in the Gazette of-

- (a) An order finding the date for the hearing of an insolvency petition under Section 19 (2) shall, when the petition is by a creditor, be paid by the creditor, and when the petition is by the debtor, be paid out of the sum deposited in Court by the debtor under Clause (32) :
- (b) Notice of a proposal for a composition under Section 38 (1) and notice of an application for discharge under Section 41(1) shall be paid by the debtor.

(34) (i) The actual cost of printing in the Gazette-fa) notice of adjudication under Section 30, and (b) notice of an order annulling an adjudication under Section 37(2) shall be collected from the person who petitions in insolvency :

Provided that if the insolvent has no assets where from the cost of the publication of the notice of the order made under Section 43(1) can be met, the Court shall send the notice with a certificate to that effect to the Director, Printing and Stationery, Government Press, Cuttack where upon the notice shall be published in *Orissa Gazette* free of charge.

(ii) The actual cost of printing plus 25 per cent shall be collected from the insolvent's estate in respect of notices under Section 64 to creditors whose claims have been notified but not proved.

(35) No costs incurred by a debtor of, or incidental to, an application to prove a composition or scheme shall be allowed out of the estate, if the Court refuses to approve the composition or scheme.

(36) If the assets available are not sufficient in any case for taking proceedings necessary for the administration of the estate, the Receiver-

or Interim Receiver or Official Receiver, as the case may be may call upon the creditors or any of them to advance the necessary funds or to indemnify him against the cost of such proceedings. Any assets realised by such proceedings shall be applied, in the first place towards the repayment of such advances, with interest thereon at 0 per cent *per annum*.

CHAPTER – II

Rules under the Special Marriage Act,1954 (Act No.43 of 1954)

1. Short title and commencement –

- (a) These rule may be called the Special Marriage Act Rules, 1954.
(b) The rules shall come into force at once :

Provided that nothing contained in the rules will affect the validity of any pending Proceeding but the petitions already filed under the act shall be made consistent with the rules by necessary amendment or remedy of the defects within a time fixed by the Court.

2. Definitions-(a) 'Act' means the Special Marriage Act,1954 (Act XLIII of 1954).

(b) 'Code' means the Code of Civil Procedure, 1908;

(c) 'Court' means the District Court.

3. Petition- Every petition made under the 'Act', not being a petition under Section 23(2) for a decree for judicial separation or a petition under Section 38 of the Act for revocation or suspension or variation of interim orders or provisions in the decree passed by the Court, shall be accompanied by a certified copy of the Certificate from the Marriage Certificate Book about the solemnisation of the marriage under the Act.

4. Contents of Petitions- In addition to the particulars required to be given under Order VII, Rule I of the Code of Civil Procedure, and other provisions of the Act. Every petition for judicial separation, nullity of marriage and divorce shall contain the following particulars:-

- (a) The place and date of marriage;
(b) The name, status and domicile of the wife and husband before the marriage:
(c)The principal permanent address where the parties cohabited including the address where they last resided together;
(d) Whether there is any living issue of the marriage and if so, the names and dates of birth, or ages of such issues.

(i)In every petition presented by a husband for divorce or judicial separation, on the ground that, his wife has committed adultery with any person or persons the petitioner shall state the name, occupation and place -

of residence of such person or persons so far as they can be ascertained;

(ii) In every petition presented by a wife for divorce or judicial separation, on the ground that her husband has committed adultery with any woman or women, the petitioner shall state the name, occupation and place of residence of such woman, or women so far as they can be ascertained;

(e) Whether there have been in any Court in India, and if so what previous proceedings with reference to the marriage by or on behalf of either of the parties and the result of such proceedings;

(f) The matrimonial offence charged set out in separate paragraphs with the time and places of their alleged commission;

(g) The claims for damages, if any, with particulars:

(h) If the petition is one for a decree of dissolution of marriage or of nullity or annulment of marriage or for judicial separation, it shall further state that there is no collusion or connivance between the petitioner and the other party, to the marriage or alleged marriage,

(i) The reliefs sought for;

5. Without prejudice to and in addition to the general applicability of Rule 4 aforesaid, every petition for divorce or judicial separation, or declaration of the nullity of a marriage, as the case may be shall respectively include the following matters to the extent of their applicability of the specific provisions mentioned therein:-

- (i) Every petition for judicial separation under Section 23(i) (b) of the Act, shall be accompanied by a certified copy of the relevant decree for restitution of conjugal rights.
- (ii) Every petition for a declaration of the nullity of a marriage under Clause (ii) of Section 25 of the Act shall state whether the petitioner was at the time of the marriage ignorant of the facts stated and whether marital intercourse with the consent of the petitioner has or has not taken place since the discovery by the petitioner of the existence of the ground for a decree;
- (iii) Every petition for a declaration of the nullity of a marriage under Clause (iii) of Section 25 of the Act shall state the date when the coercion ceased, or the fraud was discovered, and whether the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or the fraud had been discovered;
- (iv) Every petition for divorce or judicial separation or declaration of nullity of a marriage shall conclude with a prayer setting out particulars of the relief claimed, including, in the case of a petition for divorce, the amount of claim for damages,

if any, and the particulars thereof, indicating the basis upon which damages have been claimed. The prayer may include a claim for one or more of the following relief :-

- (i) custody of the children of the marriage;
- (ii) alimony pending suit;
- (iii) maintenance and educational expenses of minor children,
- (iv) Where the ground of the petition is adultery, that the petitioner has not in any manner condoned the said connived at or condoned the adultery;
- (v) Where the ground of the petition is cruelty, that the petitioner has not in any manner condoned the said cruelty;
- (vi) If the petition is on ground (h) of Section 27 of the Act, the date and the place where the respondent was last seen or heard of, and the steps which have been taken to trace the respondent;
- (vii) Every petition for divorce under Clause (i) or Clause (ii) of Sub-section (2) of Section 27 of the Act shall be accompanied by a certified copy of the decree for judicial separation or of the decree for restitution of conjugal rights, as the case may be. Any such petition by the wife under Clause (ii) of Sub-section (1 -A) of S.27 shall be accompanied by a certified copy of the decree pass under Section 18 of the Hindu Adoption and Maintenance Act, 1956 or order under Section 125 of the Code of Criminal Procedure, 1973 as the case may be;
- (viii) Where the petition is on the ground of mutual consent, the date and the place where the parties last lived together , the addresses where each party has since lived, with the period of residence at each address, the reasons why the parties have not been able to live together, the date when the mutual agreement was arrived at and whether such agreement is verbal or evidenced by a document in writing.

6. Co-respondent in husband's petition- In any petition presented by a husband for divorce or judicial separation on the ground that his wife has, since the solemnisation of the marriage, been guilty of adultery, the petitioner shall make the alleged adultery a co-respondent to the said petition, unless he is excused from so doing by an order of the Court which may be made on any one or more of the following grounds, which shall be supported by an affidavit in respect of the relevant facts-

- (i) That the respondent is leading the life of a prostitute and that the petitioner knows of no person with whom the adultery has been committed;
- (ii) That the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts for discovery;
- (iii) That the alleged adulterer is dead;

(iv) For any other sufficient reason that the Court may deem fit to consider.

7. Verification of petition - Statements contained in every petition shall be verified by the petitioner or some other competent person in a member required by the Code of Civil Procedure for time being in force for the verification of plaints.

8. Forms of petitions- The petitions made under the Act, shall so far as possible be made in the forms prescribed in the schedule to the Indian Divorce Act, 1869 (IV of 1869).

9. Petitions on behalf of Lunatics-When a husband or a wife is a lunatic or an idiot, any petition under the Act, other than the petition for restitution of conjugal rights, may be brought, on his or behalf, by the person entitled to his or her custody.

10. Petitions of minors-(1) Where the petitioner is minor, he or she shall sue by his or her next friend to be approved by the Court and no petition presented by a minor under the Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

(2) The next friend shall file an affidavit along with the petition which shall state the age of the minor, that the next friend has no adverse interest to that of the minor and that the next friend is otherwise a fit and proper person to act as such.

(3) The Court may, on considering the affidavit and such other materials as it may require, record its approval to the representation of the minor by the next friend or pass such other orders as it may deem fit.

11. Notice- The Court shall issue notice to the respondent, and co-respondent, if any. The notice shall be accompanied, unless otherwise directed by the Court, by a copy of the petition. The notice shall also require, unless the Court otherwise directs, the respondent or co-respondent to file his or her statement in Court within a period of four weeks from the service of the notice and to serve a copy thereof upon each of the other parties to the petition, within the aforesaid period.

12. Service of Petitions- Every petition and notice under the Act shall be served on the party affected thereby in a manner provided for service of summons under Order V of the Code:

Provided that the Court may dispense with such service in case it seems necessary or expedient so to do and substitute it by any other mode of service of notice as it thinks necessary.

13. Written statements in answers to petitions by Respondents- The Respondent may and, if so required by the Court, shall present a written statement in answer to the Petition. The provisions of Order VIII of the Code shall apply *mutatis mutandis* to such written statements. In particular, if in any proceedings for divorce the Respondent opposes-

the relief sought in the petition on the ground of the petitioner's adultery, cruelty or desertion, the written statement shall state the particulars of such adultery, cruelty or desertion as required in the case of petition under Clauses (d) and (f) of Rule 4 and the particulars of any relief which he claims on the said grounds.

14. Interveners in wife's petition - (1) Unless the Court for good cause shown otherwise directs:-

- (a) Where the husband is charged with adultery with a named female person a copy of pleading or material portion thereof containing such charge shall be served upon the person with whom adultery is alleged to have been committed, accompanied by a notice that such person is entitled within the time therein specified to apply for leave to intervene in the cause.
 - (b) Where the written statement of the Respondent alleges adultery by the petitioner with named man or woman as the case may be a copy of such statement or such material portion thereof containing such allegation shall be served on such man or woman, accompanied by a notice that such person is entitled within the time therein specified to apply for leave to intervene in the cause.
- (2) Cost regarding Intervention - (a) Whenever the Court finds that an intervener has no sufficient grounds for intervening it may order the intervener to pay the whole or any part of the costs caused by such intervention.
- (b) Whenever the Court finds that the charge or allegation of adultery against the intervenor made in any petition is baseless or not proved and that the intervention is justified, it may order the person making such charge or allegation against the intervenor to pay to the intervenor the whole or any part of the costs of intervention.

15. Answer- person to whom leave to intervene has been granted may file in the Court an answer to the petition containing the charges or allegations against such intervenor.

16. Intervention by 3rd party- During the progress of the petition under Chapter V or VI of the Act, any person suspecting that any parties to the petition are or have been acting in collusion, or the petitioner has committed fraud or he has concealed some material facts from the Court for the purpose of obtaining the decree prayed for, shall be at liberty to apply to the Court stating the circumstances and facts of such collusion, fraud and concealment, as the case may be. The application shall be supported by an affidavit. When such application is filed, the Court shall give notice thereof to the parties concerned and after hearing them and taking necessary evidence pass the necessary orders-

- (i) If the Court comes to the conclusion, that such collusion, fraud or concealment of material fact is proved, then the original petition shall be dismissed, and the intervening third party shall be awarded his cost from the parties, guilty of such collusion, fraud or concealment of facts.

- (ii) Whenever such application is made and the Court comes to the conclusion that the intervening third party had no grounds or no sufficient grounds for intervening, it may order him to pay the whole or any part of the costs occasioned by his intervention.

17. Competence of husband and wife to give evidence as to cruelty or desertion or judicial separation on any petition presented by a wife praying for divorce or judicial separation by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion without reasonable excuse the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

18. Mode of taking evidence- The witness in all proceedings before the Court where their attendance can be had shall be examined orally and party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness :

Provided that parties shall be at liberty to verify the respective cases in whole or in part by affidavit but the deponent every such affidavit shall on the petition of the opposite party, or by direction of the Court by subject to be cross-examined by or on behalf of the opposite-party orally and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

19. Damages- Any husband may, either in a petition for divorce or judicial separation, claim damages from any person on the ground of his having committed adultery with the wife or such petitioner.

- (i) Such petition shall be served on the alleged adultery and the wife, unless the Court dispenses with such service in accordance with the provisions of Rule 12. (ii) The damages to be recovered on any such petition shall be ascertained by the said Court although the respondent or either of them may not appear. After the decision has been given, the Court may direct in what manner the damages shall be paid or applied.

20. Costs- Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceedings :

Provided that the co-respondent shall not be ordered to pay the petitioner's costs :-

- (i) if the respondent was, at the time of the adultery living apart from her husband and leading the life of a prostitute; or
- (ii) if the co-respondent had not at the time of adultery, reason to believe the respondent to be a married woman;

21. Taxation of Costs- Unless otherwise directed by the Court the costs of the petition under the Act shall be costs as taxed in suits under the Indian Divorce Act IV of 1869.

22. Order as to costs- (a) The award of costs shall be within the discretion of the Court and the Court shall make an order about the same while passing the decree.

(b) At any stage of the proceeding, initiated by the husband, the wife may apply for an order on the husband to pay into Court a sufficient sum of money to cover her costs of and incidental to the hearing of the cause, and the Judge shall thereupon issue an order upon the husband to pay into Court such amount as he thinks reasonable, unless he is-satisfied that the wife has sufficient separate estate or that there is other good cause why such an order should not be made.

23. Power to adjourn- Court may from time to time adjourn the hearing of any petition under the Act and may require further evidence thereon if it seem fit to do so.

24. Transmission of certified copies of the decrees- The Court shall send a true copy of every decree for divorce or nullity or dissolution or marriage to the Marriage Officer appointed under Section 3 of the Act.

25. A proceeding commenced by a petition for divorce or a declaration of the nullity of the marriage or judicial separation or restitution of conjugal rights shall be deemed to be a suit for the purpose of Civil Procedure Code.

CHAPTER – III

Rules under the Hindu Marriage Act, 1955

(Act No. 25 of 1955)

1. Short title and commencement- (i) These rules may be called the Hindu Marriage and Divorce Rules, 1956.

(ii) These rules shall come into force with immediate effect:

Provided that nothing contained in these rules will affect the validity of any pending proceeding under the Act but the petitions already filed under the Act shall be made consistent with these rules by necessary amendment or remedy of the defect within a time fixed by the Court.

2. Definitions- (i) 'Act' means the Hindu Marriage Act, 1955 (Act 25 of the 1955).

(ii) 'Code' means the Code of Civil Procedure, 1908;

(iii) 'Court' means the Court mentioned in Section 3(b) of the Act.

3. Proceedings under the Act and petition-(a) Every proceeding under the Act shall be registered as a suit;

(b) Every petition for divorce on any of the grounds mentioned in Clause (1) and (ii) of the Sub-section (1-A) of Section 13 of the Act -

shall be accompanied by a certified copy of the decree for judicial separation or for restitution of conjugal rights as the case may be. Such a petition by the wife under Clause (iii) of Sub-section (2) of Section 13 of the Act shall be accompanied by a certified copy of the decree passed under Section 18 of the Hindu Adoption and Maintenance Act, 1956 or order under Section 125 of the Code of Criminal Procedure 1973 as the case may be.

4. Contents of petitions- (i) In addition to the particulars required to be given under Order 7, Rule 1 of the Code of Civil Procedure and Section 20 of the Act every petition for judicial separation, nullity of marriage and divorce shall contain the following particulars :-

- (a) The place and date of marriage;
- (b) The name, status and domicile of the wife and husband, before and after the marriage;
- (c) The principal permanent address where the parties cohabited including the address where they last resided together.
- (d) Whether he is living any issue of the marriage if so the names and dates of birth or ages of such issues:
 - (i) In every petition presented by a husband for divorce on the ground that his wife is living in adultery with any person or persons or for judicial separation on the ground that his wife has committed adultery with any person or persons the petitioner shall state the name occupation and place of residence of such person or persons so far as they can be ascertained;
 - (ii) In every petition presented by a wife for divorce on the ground that her husband is living in adultery with any woman or women or for judicial separation, on the ground that her husband has committed adultery with any woman or women the petitioner shall state the name, occupation and place of residence of such women, so far as they can be ascertained;
- (e) Whether there have been in any Court in India and if so, what previous proceedings with reference to the marriage by or on behalf of either of the parties, and the result of such proceedings;
- (f) The matrimonial offence or offences charged, set out in separate paragraphs with the time and place of its or their alleged commission;
- (g) Property mentioned in Section 27 of the Act if any;
- (h) The relief or reliefs prayed for;

5. Necessary parties-(a) In every petition for divorce or judicial separation on the ground that the respondent is living in adultery or has committed adultery with any person, the petitioner shall make such person a co-respondent. The petitioner, may however, apply to –

the Court by an application supported by an affidavit for leave to dispense with the joinder of such person as a co-respondent on any of the following grounds:-

- (i) That the name of such person is unknown to the petitioner although he has made due efforts for discovery;
- (ii) That such person is dead;
- (iii) That the respondent being the wife is leading the life of a prostitute and that the petitioner knows of no person with whom adultery has been committed;

(iv) For any other sufficient reason the Court may deem fit to consider.

(b) In every petition under Section 11 of the Act on the ground that the condition in Section 5 (1) is contravened, the petitioner shall make the spouse alleged to be living at the time of the marriage a correspondent.

(c) In every petition under Section 13 (2) (i) of the Act the petitioner shall make "the other wife" mentioned in that Section a co-respondent.

6. Application for leave under Section 14 of the Act - (1) Where any party to a marriage desires to present a petition for divorce within one year of such marriage, he or she shall obtain leave of the Court under Section 14 of the Act on *ex parte* application made to the Court in which the petition for divorce is intended to be filed.

(2) The application shall be supported by an affidavit made by the petitioner setting out the particulars of exceptional hardships to the petitioner or exceptional depravity on the part of the respondent on which leave is sought.

(3) The evidence in such application may, unless the Court otherwise directs, be given by affidavit.

(4) When the Court grants leave the petition shall be deemed to have been duly filed on the date of the said order. The petitioner within a week of the date of the said order shall file sufficient number of copies of application for leave and order of the Court thereon and of the petition for divorce for service upon the respondents in the petition.

7. Service of copy of application for and order granting leave on the respondents and procedure after service :

- (1) When the Court grants leave under the preceding rule a copy of the application for leave and order granting leave shall be served on each of the respondents along with the notice of the petition for divorce.
- (2) (a) When the respondent desires to contest the petition for divorce on the ground that leave for filing the petition has been erroneously granted or improperly obtained, he or she shall set forth in his or her written statement the grounds with particulars on which the grant of leave is sought to be contested.

- (b) The Court may, if so deems fit, frame, try and decide the issue as to the propriety of and leave granted as a preliminary issue.
- (c) The Court may, at the instance of either party, order the attendance for examination or cross-examination of any deponent in the application for leave under the preceding rule.

8. Service of petitions- Every petition and notice under the Act shall be served on the party affected thereby in the manner provided for service of summons under Order V of the Civil Procedure Code.

9. Written statements in answers to petitions by respondents-The respondents may and if so required by the Court shall present at written statement in answer to the petition. The provisions of Order VIII of the Code shall apply *mutatis mutandis* to such written statements. In particular if in any proceeding for divorce the respondent opposes the relief sought in the petition on the ground of the petitioner's adultery, cruelty or desertion, the written statement shall state the particulars of such adultery, cruelty or desertion.

10. Intervenor petitions-(i) Unless the Court for good cause shown otherwise directs, where the written statement of the respondent alleges adultery by the petitioner with a named man or woman a copy of such statement or such material portion thereof containing such allegation shall be served on such man or woman accompanied by a notice that such person is entitled within the time therein specified to apply for leave to intervene in the case.

(2) *Costs regarding intervention-*(a) Whenever the Court finds that an intervenor had no sufficient grounds for intervening, it may order the intervenor to pay the whole or any part of the costs occasioned by the application to intervene.

(b) When the Court finds that the charge or allegation of adultery against the intervenor made in any petition or written statement is baseless or not proved and that the intervention is justified, it may order the person making such charge or allegation against the intervenor to pay to the intervenor the whole or any part of the costs of intervention.

11. Answer- A person to whom leave to intervene has been granted may file in the Court an answer to written statement containing the charges or allegations against such intervenor.

12. Mode of taking evidence – The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined like any other witness.

Provided that the parties shall be at liberty to verify the respective cases in whole or in part by affidavit, but the deponent of every such affidavit shall, on the application of the opposite-party, or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite-party orally, and after such cross-examination, may be re-

examined or any as aforesaid by or on behalf of the party by whom such affidavit was filed.

13. Application for alimony and maintenance- (a) Every application for maintenance pendence lite permanent alimony and maintenance or for custody, maintenance and educational expenses of minor children, shall state the average monthly income of the petitioner and the respondent, the sources of these income, particulars of other movable and immovable property owned by them, the number of dependents on the petitioner and the respondent, and the names and age of such dependents.

(b) Such application shall be supported by an affidavit of the applicant.

14. Taxation of Cost- Unless otherwise directed by the Court, the costs of the petition under the Act shall be costs as taxed in a suit.

15. Order as to costs- The award of costs shall be within the discretion of the Court.

CHAPTER – IV

Rules under the Arbitration Act, 1940 (Act X of 1940)

1. These rules shall be called the Arbitration Rules, All references therein to the 'Act' shall mean the Arbitration Act, 1940 (Act X of 1940).

2. Title of application-(a) Save as hereinafter provided, all applications, affidavits and proceedings, under the Act, shall be instituted in the matter of the Act, and in the matter of the Arbitration.

(b) Applications under Chapter IV of the Act shall be filed in the suit or matter in which order of reference is made.

(c) Applications under Section 34 of the Act shall be filed in the suit which the applicant seeks to have stayed.

(d) Applications under Section 7(2) of the Act, shall be filed in the matter of the insolvency in which the reference to arbitration is sought or claimed.

(e) Applications under Sections 14 (2) and 20 (1) of the Act shall if the Court is satisfied that the petition is in order, be numbered and registered as regular suits. Other applications under the Act shall be numbered and registered as Miscellaneous Judicial Cases.

3. Mode of application-All applications under the Act, shall be made by petition and shall be presented to the proper Court in the same manner as plaints or other applications. The petition shall be verified in the manner prescribed by Rule 15 of Order VI of the Code of Civil Procedure, 1908, or if the Court so directs, supported by an affidavit.

4. Contents of petition -The petition shall be divided into paragraphs, numbered consecutively and shall contain the name, description and place of residence of the petitioner and the opposite-party, a statement in summary form-

(a) of all material facts;

-
- (b) of the facts showing that the Court to which the application is presented has jurisdiction to deal with it; and
- (c) of the nature of the relief asked for and shall specify the names, description and places of residence of other persons liable to be affected thereby.

5. Applications to the Court which are consented to by the parties affected thereby shall be made with the consent of the said parties endorsed thereon and signed by them.

6. The Form Nos. (J) 44, (J) 45, (J) 46, (J) 47, (J) 48 and (P) 40 shall be used for the purposes to which they severally relate with such variation as the circumstances of each case may require.

7. In a reference under Section 13 (b) of the Act the question of law and the facts out of which they arise shall be distinctly stated in Form No. (J)44, A copy of the arbitration agreement, if any shall be annexed to such reference. The Arbitrators or Umpire making the reference shall give notice of the action taken by them to the parties concerned.

8. When the Court has pronounced its opinion under Section 14(3), it shall be the duty of the Arbitrator or Umpire making the reference to have a certified copy of such opinion added to and made a part of the award.

9. Every application under Section 14(2) of the Act for filing an award in a Court shall be in writing.

10. Every application made to a Court under Section 20 (10), of the Act shall be accompanied by the original agreement or if the same be not in the possession or control of the applicant, then a copy thereof.

11. After a petition has been presented the Court may if it is not in order or according to law, reject it. If it is not so rejected, the Court shall direct notice thereof to be given to all persons mentioned in the petition and to such other persons as may seem to it be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the notice, why the relief sought in the petition should not be granted. Such notice shall be accompanied by copies of the petition and the affidavit, if any, copies being supplied by the petitioner.

12. The petitioner shall deposit the necessary process fees for service of notice on the other parties concerned (including persons likely to be affected by the proceedings) within seven days of the order directing the issue of notice or within such further time as the Court may, for sufficient cause shown, allow.

13. (i) The Arbitrator or Umpire or any of the parties to the arbitration may cause an award or signed copy thereof to be filed in Court in the manner prescribed in Rule 3.

(ii) Where an award is filed by the Arbitrators or Umpire under Section 14(2) of the Act they shall send to the Court under sealed cover the award or a signed copy thereof together with any proceedings or depositions and documents which may have been taken and proved-

before them and the opinion pronounced by the Court on the special case under Section 14(3) of the Act, if any, together with the full address of all the persons who are parties in the arbitration proceedings. They shall also send with the award a copy of the notice given to the parties concerned under Section 14(1) of the Act together with an affidavit of service of such notice and of attestation of their signatures on the award. If the sealed cover is sent by post, it shall be sent under registered cover, acknowledgement due. The award so filed shall form part of the record.

(iii) Where the award is filed by a party to the arbitration under Clause (2) any party to the arbitration may move the Court to direct the arbitrators or Umpire to produce before it any proceedings or depositions or documents which may have been taken and proved before them together with the record of the arbitration which may be in their possession.

14. The Court shall forthwith issue notice of the filing of the award or a signed copy thereof-

(i) to the other parties concerned, if any of the parties to the arbitration has filed it, on the requisites being supplied by that party; or

(ii) to all the persons concerned, who are parties in the arbitration proceeding free of costs when it has been filed by the Arbitrators or Umpire under Section 14(2) of the Act.

15. When an application under Section 20(1) of the Act is filed and registered, the Court shall, on the application, issue a notice returnable within not less than 10 days from the date of service thereof, calling upon the opposite-party to show cause why the arbitration agreement should not be filed.

16. (i) processes to parties to the arbitration proceedings or to witnesses shall be issued by the Court on the written application of Arbitrators or Umpire.

(ii) If the proceedings are under Chapter II of the Act, the application for such processes must be accompanied by a copy of the agreement under which the Arbitrators or the Umpire is acting, if, otherwise the date of order appointing an Arbitrator or Umpire shall be mentioned in the application.

17. The Court fees and process fees chargeable for all petitions shall be in accordance with the Court fees 'Act' and the rules for the levy of process fees in force for time being.

18. Form No.(P) 40, so far as it can be made applicable shall be used with necessary modifications in issuing the notice required to be given by the Court for the purpose of the Act.

19. The orders of reference under Sections 20(4) and 23 (1) of the Act, shall be made in Form No.(J) 47.

20. The order of appointment of Arbitrators or Umpire under Sections 8(2) and 12 shall be made in Form No. (J) 48.

21. Every application under Section 21 of the Act, shall be made in Form No.(J) 45 with due regard to the provisions of Rule 5 above.

22. In making the award under the Act, the Arbitrators or Umpire as the case may be, shall use Form No. (J) 46 for the purpose.

23. With regard to the preservation, interim custody or sale of any goods which are the subject-matter of a reference Courts shall be guided by the relevant provisions of the Code of Civil Procedure and of the rules in Chapter of Part I ante.

24. The rules in Chapter XI of Part I *ante* shall as far as they are applicable, apply to appeals under Section 39 of the Act.

25. In matters not provided for in the foregoing rules or in the Act, the provisions of the Code of Civil Procedure, 1908, and those contained in other chapters, shall *mutatis mutandis* apply to all proceedings before the Court and to all appeals under the Act,

CHAPTER – V

Rules under the Transfer of Property Act, 1882

(IV of 1882)

APPLICATION UNDER SECTION 83

1. Every application under Section 83 shall be made by a verified petition, stating the facts.

2. Payment into Court of cost and expenses under Section 83 or any subsequent Section Costs to be estimated and certified-
Unless otherwise ordered there shall be paid into Court, in addition to the sum deposited under Section 83 or any subsequent Section, a sum sufficient to provide for the mortgagee's costs of obtaining payment out of Court; and also when such payment is made under Section 83, a further sum to provide for the mortgagee's costs of transferring the property, and causing such transfer to be registered, such costs to be estimated and certified by the Sheristadar.

3. Order for payment of money into Court under Section 83-Every order for payment of money into Court under Section 83, shall specify the sums to be paid, and the purpose for which each sum is intended.

4. Of notice of Payment under any subsequent Rule- When money is paid into Court under Order XXXIV Rule 2 of the Code of Civil Procedure or under any subsequent rules of the said order, the person making such payment shall forthwith give written notice thereof to the person or persons on whose account such payment is made.

5. Application by Mortgagee –Every application by a mortgagee to obtain payment of money out of Court shall be on a verified petition.

6. Disallowance where Tender Refused - Where it shall appear that previous to any payment into Court under Section 83 or any subsequent Section a sufficient tender was made to, and refused by the mortgagee, he shall not be allowed to obtain payment of the amount deposited in -

Court to meet his claim, without deduction of the fees and charges of the Court nor shall be allowed his costs of obtaining such payment. Except as aforesaid, or when otherwise ordered, the mortgagee shall be allowed all costs properly incurred by him.

7. When Interest Disallowed- if through default on the part of the mortgagee it becomes necessary to obtain an enlargement of time under Order XXXVI, Rule 3 or Rule 8 of the Code of Civil Procedure, no interest shall be allowed for the enlarged time without a special order in that behalf.

8. Order for payment of money out of Court under Section 83 or any subsequent Section - On an application for payment of money out of Court, under Section 83 or any subsequent by a mortgagee who has complied with the orders of the Court and the provisions of the Act and of the rules made in this behalf as far as they relate to him, or apply to his case, and has, when required so to do, transferred the property and possession free from encumbrance, and caused such transfer to be registered and accounted for the documents of title which were held by him, the Court shall make such order or orders as to it shall deem fit for the disposal of the capital sum and interest thereon and of the fund for costs and expenses.

9. Decree absolute for foreclosure - Order XXXIV, Rule 3 or Rule 8 C.P.C.-Every decree absolute for foreclosure under Order XXXIV, Rule 3 or Rule 8 C.P.C. shall direct that possession of the property be given to the mortgagee except where he is already in possession. It shall be drawn up with a recital of the decree and the proceedings thereunder and with a full description of the property.

18. Conveyance of Property sold under order XXXIV Rule 4 of C.P.C. or any subsequent Rule- Where immovable property is sold under Order XXXIV, Rule 4 of C.P.C. or any subsequent rule the purchaser may on application, obtain a certificate of sale as evidence of the title to the property sold to him and may also at his own costs, obtain a conveyance from the mortgagor.

11. Order under Section 83 how enforced - Every enforceable order made under Section 83 may be enforced under the provisions of the Code of Civil Procedure and shall for that purpose be deemed to have been made in a suit instituted under that Code.

CHAPTER - VI

Wills

Rules issued by the Government of Bengal and Assam for the custody, preservation, and inspection of Wills under Section 294 of the Indian Succession Act XXXIX of 1925.

I -Relating to the custody and preservation of Wills

1. All Original Wills presented to the District Judge or District Delegate in accordance with the provisions of Section 244, 254 and

255 of Act X of 1865, and Section 62, 76 and 77 of Act V of 1981 corresponding respectively to Section 276, 289 and 290 of Act XXXIX of 1925 shall, immediately upon the passing of the order for granting Probate or Letters of Administration under Sections 254 and 255 of Act X of 1865, and Sections 76 and 77 of Act V of 1881 be committed to the care of the Head Clerk or Chief Ministerial Officer of the Judge's or District Delegate's Court, who shall be responsible for their safe custody.

Note- All Wills, as soon as they are filed in a Court for the purpose of being proved should be made over for safe custody in the presence of the District Judge or Delegate either to the Head Clerk or to the Sheristadar of the Court, who should give a receipt for them, and should personally produce them, before the Court, on the date of hearing, and if the Will has to be retained in Court, should take a written receipt for it from the Bench Clerk. The latter officer will be responsible for the custody of the Will so long as it remains in the Court. The rule as to return of unexhibited documents shall apply to unexhibited Wills.

2. The said officer shall, on the receipt of each original Will, cause a copy of the same to be carefully entered in a register to be kept for that purpose, and shall also cause to be prepared an alphabetical index, in which the name of the testator, etc. and the number and page of the register in which a copy of the Will is entered, shall be recorded in the annexed form :-

Name of the Testator	Residence etc.	Number and year of Register	Page
1	2	3	4

Note- Every Volume of the register in which copies of Wills are made must be ruled and the pages numbered before it is brought into use, a note being made at the beginning of the volume of the number of pages it contains. Each copy should follow immediately upon that which precedes it and should be written in a clear hand, corrections being written above the line and initialled by the officer who compares the copy with the original no erasures being permitted. All copies should be made immediately on receipt of the original and should be compared with the original by the Sheristadar or Head Clerk who should certify at the bottom of each page and at the end of the copy that such comparison has been made and that the copy is correct. Should the number of pages at the end of a register be insufficient to include a copy of the Will which would ordinarily be inserted there a fresh volume should be taken into use and the blank sheets scored across a note being added at the beginning of the volume 'Pages to blank'.

Note 2- Each Volume of the register should be legibly marked on the back with its own serial number with the year to which it relates and with the serial numbers of the first and last copies contained in it.

Note 3- In preparing the alphabetical index referred to in this rule- (a) In the case of European names the surnames shall be taken as the indeed word, and

(b) Indian names shall be indexed according to their first letters as they stand in the Will except that appellations such as Saiyid Shakh, etc, if appearing at the beginning of the name, shall be shown in the index at the end of the name and shall be transliterated in the same form as that in which they are written in the Will.

Note 4- This rule does not apply were an application for Probate or Letters of Administration has been refused. In such cases, the Will is to be attached to the record provided that this is not done before the expiry of the period for an appeal or if there has been an appeal before its disposal. This procedure is also to be followed when the order granting Probate or Letters of Administration is revoked in a subsequent proceeding or in appeal. In such cases appropriate notes should be made in the Index and in the Register of Copies.

Note 5- When an application for grant of Probate or Letters of Administration has been dismissed for default, the "WILL" should not be tagged to the record of the case while consigning the same to the Record Room and the "Will" should be kept in the custody of the Chief Ministerial Officer or the Head Clerk of the District Court as the case may be. After disposal of the case for default, the party filing the will may be noticed to take return of the same as per provision of Rule 232 at page 101 of the General Rules and Circular Orders (Civil), Volume-I.

These instructions will have a retrospective effect and Wills in connection with unsuccessful applications the records of which have without them been transmitted to the Record-Room may now, be sent to the Record-Keeper to be attached to the records to which they appertain or to be destroyed as the case may be in accordance with the rules for a periodical destruction of records.

3. The original Wills shall be deposited in a fire-proof safe, which shall be kept in the Office-room of the Head Clerk, or other officer aforesaid to whom the safe custody of the Wills may have been entrusted. Where the Court has no iron safe, the Wills may be placed in a small block tin box, the key of which shall remain with the Judge or District Delegate; and the District Registrar or Sub-Registrar of the place shall if the Judge or District Delegate require him, lock up this box in his fire-proof safe giving it up to the Judge or District Delegate on his written demand from time to time.

Note 1- Each original Will shall have endorsed upon it the number and page of the volume in which its copy is entered, and shall be kept in a separate envelope marked outside with the same particulars and with the testator's name and the year of execution. Wills should be kept in the safe or box in their proper serial orders. **Note 2-** When an original Will is removed from the custody of the officer responsible for it, a note of the date of despatch and return should be made against the entry in the Index prescribed in Rule 2, and for such entries sufficient space should be left in the form.

Note 3-All copies of Wills shall be prepared in the presence of the officer responsible for the custody of the original, which shall not be removed by the copyist. The same officer shall check the copy and certify its accuracy.

Note 4- In all cases when an original Will is removed from the custody of the officer in charge, he should note upon the envelope (which should be retained in its proper place) the date and place of removal scoring out the entry with a note of the date, on return. Careful examination should be made of all Wills so returned, to ensure that no alterations have been made.

4. At the expiration of every calendar year each District Delegate shall transmit to the Court of the District Judge all the original Wills in respect of which a grant has actually been made of Probate or Letters of Administration during the year together with the register containing the copies thereof and the index, and these shall be preserved along with the Wills deposited in the District Court subject to the same rules as to custody, inspection, etc.

II-Relating to Inspection of Wills

5. Every inspection of original Wills or the registers thereof, as well as applications for copies of Wills, shall be made within the hours fixed by the Judge or District Delegate, and published by a notification posted in a conspicuous place in the Court, and shall be subject to the following conditions :

6. The inspection of an original Will shall be allowed only on the written order of the Judge or of the District Delegate previously obtained, and shall take place in the presence of the Head Clerk, or other officer who may have charge of the same, and that officer shall be responsible for the Will not being taken out of his sight during such inspection, and also that no erasures or alterations are made in it.

Note- The same procedure should be followed in respect of inspection of a copy of a Will in the Register.

7. Application for a copy of an original Will shall be submitted to the Judge or District Delegate and such copy shall only be granted subject to the conditions which attach to the inspection of original Wills.

8. The following fees shall be levied in Court-fee stamps for the inspections of Wills, etc :

- (i) For the inspection of an original Will Court-fee stamp of the value of one rupee.
- (ii) For the inspection of a copy of a Will in the Register Court-fee stamp of the value of fifty paise.
- (iii) For copies, the same fee as for inspection, in addition to the copying charges, which shall be at the usual rate obtaining in the Civil Courts, and shall be levied in the same way as such charges are levied in the Civil Courts.

9. All application for copies or inspection of Will and Register of Wills shall be entered in the Register or applications for copies prescribed by the High Court.

Note- Application for inspection may be entered instead in the inspection Register Form No. (R) 23.

10. In case where the fees collected exceed Rs. 5 per mensem. District Judges or District Delegates may assign the Wills, the balance being credited to Government. In case where the collections do not average more than Rs.5 per mensim, District Judges or District Delegates may sanction the payment to such officer of the full amount realized.

Note- District Judges should not pass bills for remuneration under this Rules unless they are satisfied that the work has been carried out methodologically and completely up- to- date.

11.(a) The following certificate should be appended to each bill in which the charges referred to in the preceding rule are drawn : -

“ Certified that the charges including in this bill have been drawn in accordance with the scale laid down by Government in the notification , dated the 23rd May, 1892, and that each Court –fee stamp for which commission is drawn is defaced with the words’ Commission allowed ‘. Certified also the fee drawn on previous bills (with the exception of those deducted above) have been disbursed to the proper person and his receipt taken in the acquittance roll field in my office.”

(b) As there is a separate Budget Allotment for the expenditure, the charge should be drawn on separate bills showing the allotment and expenditure up-to- date of each drawal.

Note- The rules in this chapter apply also to subordinate Judges and Munsifs taking cognizance of proceedings under the Indian Succession Act, 1925 (Act XXXIX of 1925), under the authority conferred by Section 23(2) of the Bengal, Agra and Assam Civil Courts Act.
