

## CHAPTER VIII

### Procedure before Admission

1. The rules of Chapter VI shall apply, so far as may be, to every memorandum of appeal, to every memorandum of objection under Order XLI rule 22 or 26 of the Code of Civil Procedure and to every application for revision or review.
2. (1) Subject to Article 12 of the Orissa High Court Order, 1948 every appeal to the High Court under Article 4 thereof read with clause 10 of the Letters Patent constituting the High Court of Judicature at Patna from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the High Court and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of criminal jurisdiction) of one Judge of the High Court or one Judge of any Division Court pursuant to Article 225 of the Constitution, shall be presented to the Registrar within thirty days from the date of the judgment appealed from unless a Bench in its discretion, on good cause shown, shall grant further time. The Registrar shall endorse on the memorandum the date of presentation and after satisfying himself that the appeal is in order and is within time shall cause it to be laid before a Bench for orders at an early date. It shall be accompanied by a certified copy of the judgment appealed from together with a neatly typed second copy thereof.  
  
(2) Subject to Article 12 of the Orissa High Court Order, 1948 every application for a Certificate under Article 4 thereof read with clause 10 of the Letters Patent constituting the High Court of Judicature at Patna in the case of a judgment of a Single Judge of the Court deciding a second appeal shall be made orally to the Judge in question immediately after the judgment is delivered. No subsequent application will be entertained unless upon a duly stamped special application supported by affidavit filed within thirty days and not more from the date of the judgment the Judge is satisfied that circumstances existed rendering an immediate application impossible.  
  
(3) If the Judge certifies that the case is a fit one for appeal a duly stamped memorandum of appeal may be presented to the Registrar within a period not exceeding sixty days from the date of the judgment unless the Judge in his discretion on good cause shown shall grant further time for its presentation.  
  
(4) The memorandum of appeal need not be accompanied by a copy of the judgment of decree appealed from.

3. Every memorandum of appeal and every application for review or revision shall immediately below the title have endorsed on it “First Appeal”, “Second Appeal”, “Review” or “Revision”, as the case may be and shall state-
- (a) the name and address of each appellant or applicant;
  - (b) the name and address of each person whom it is proposed to make a respondent of opposite-party;  
NOTE-Address in (a) and (b) includes name of thana and name of Munsifi.
  - (c) the Court in which and the name of the Judge or Munsif by whom the decree or order objected to was made;
  - (d) The date when such decree or order was made;
  - (e) the names of all the parties to such decree or order and whether such parties were plaintiffs, defendants, or applicants in the Court of first instance;
  - (f) the ground or grounds, numbered seriatim of objection to the decree, order or judgment;
  - (g) the relief sought by such appeal, review or revision;
  - (h) the amount of the Court-fee paid, the value of the appeal and in the case of an application for revision, the value of the suit out of which the application arises;

Provided that:-

(i) in every case in which an appeal or cross objection is preferred to this Court and the valuation for the purposes of Court fees or the Court-fee paid varies from that of the trial Court in the case of First Appeals or from that of either the trial Court or the lower appellate Court in the case of Second Appeals, the Advocate shall at the time of filing the Appeal add below the valuation in the memorandum of appeal a short explanatory note setting forth the reasons for the variation giving, if necessary, references to the certified copies of the judgment and the decree and mentioning the relevant pages thereof, which are filed with the memorandum of appeal.

(ii) in case of Civil Revisions under section 115 of the Code of Civil Procedure and under section 25 of Provincial Small Cause Courts Act, the petitioner shall state whether any revision on the same facts against the same order or judgment had been previously filed before the Court on behalf of all or any of the petitioners' and, if so, with what result,

(i) in the case of an appeal, whether the suit in which the appeal is made has already been before the Court on appeal.

3-A [1] In addition to the information required to be furnished as per the provisions of Rule 3, every memorandum of appeal shall contain the gist of the cases of respective parties as also the substance of the findings recorded by the Trial Court and the Lower Appellate Court.

4. When two or more cases are tried together and decided by the same judgment and two or more appeals are filed against such judgment or when two or more appeals or revisions are filed by the same party against a judgment or where two more appeals are filed against a common judgment by the same or different appellants or petitioners, the Registrar may, in his discretion, if satisfied that the questions for decision are analogous in each appeal or revision, dispense with the production of more than one copy of the judgment:

Provided that in the appeal or revision in which the filing of a certified copy of the judgment is dispensed with the appellant or petitioner, as the case may be, shall file a neatly typed copy of the same, certified to be a true copy by the Advocate presenting the appeal or revision:

Provided further that in the cases as aforesaid any of the parties concerned may file a memorandum for analogous hearing of the appeals or revisions, as the case may be, and the Registrar, if satisfied that the questions for decision are similar in each appeal or revision, may direct that the said appeals or revisions may be heard analogously by the Court.

5. In the case of –

- (i) Appeals from Orders of the Lower Appellate Courts remanding cases for retrial, and
- (ii) Appeals from Orders of the Lower Courts made on remand by the High Court;

there shall be added at the foot of every memorandum of appeal a note to the following effect :--

This appeal is from an Order of the Lower Appellate Court, dated the ..... remanding the case for retrial under section ..... of the Code of Civil Procedure.

OR

This appeal is from an order of the Lower Appellate Court (or Court of first instance as the case may be) made on remand by the High Court, dated the.....

---

[1] Inserted vide c.s. No. 38

6. A memorandum of appeal or application for revision of an appellate decree or order shall be accompanied by copies of the judgments of both the Lower Courts and if filed by an Advocate shall bear a certificate under his hand that in his opinion each of the grounds taken in the appeal or application is a good ground for appeal or for revision.

In appeals from original decrees the memorandum of appeal shall be accompanied by the requisite process-fee and the process forms, duly filled in, the date of appearance and the date of the notice being left blank.

7. When an appeal or application is not accompanied by the necessary copies of judgments, the Registrar may allow time for production of the same. If copies are not produced within the time allowed the appeal or application shall be laid before the Court for orders.

NOTE – The provisions of this rule shall apply *mutatis mutandis* to an appeal from original decree where the memorandum of appeal is not accompanied by the requisite process fee and the process forms.

8. Every memorandum of appeal the ground of which is that there is in fact on the record no evidence of evidence or admission to support the decree shall state sufficiently the material finding in support of which there is no evidence or admission on the record.
9. Every memorandum of appeal from an appellate decree on the ground mentioned in the last preceding rule which is presented by an advocate shall bear a certificate under his hand that he has examined the record and that, in his opinion, such ground is well founded.
10. Every application for review of a judgment shall set forth plainly and concisely the grounds on which a review is sought, and shall contain a certificate by the advocate, similar to that prescribed for appeals from appellate decrees.
11. Every application for review made upon the ground of the discovery of new and important matter or evidence within the meaning of Order XLVII, Rule 1 of the Code of Civil Procedure shall be accompanied by an affidavit of the applicant or his Advocate stating in clear terms what such new and important matter or evidence is, the effect or purport thereof, and that the same after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed, the order was made or the judgment was delivered.

The documents, if any, relied upon, shall be annexed to the application.

12. Every memorandum of appeal, memorandum of objection under Order XLI, Rule 22 or 26 of the Code of Civil Procedure and every application for review or revision shall be presented either to the Court or to the Registrar, as the case

may be, applications for review, in particular, must be presented by way of motion in open Court to the Bench of whose judgment a review is sought or if the Judges of such Bench are not sitting together to the senior of such Judges who is then attached to the Court and present.

13. If an application for review of a judgment cannot be heard in the manner provided in Order XLVII, Rule 5 of the Code of Civil Procedure such application shall be presented by the applicant or his Advocate to the Chief Justice who shall provide for the hearing of the application.
14. Every memorandum of appeal, every memorandum of objection under Order XLI, Rule 22 or 26 of the Code of Civil Procedure and every application for review or revision shall, on presentation for admission and every reference received in the Court, be examined by the Stamp Reporter who shall certify thereon whether the memorandum, petition or reference is in due form, within time and when a stamp is required, as to the sufficiency or otherwise of the stamp, or in the case of a stamp of which the sufficiency cannot be ascertained that the report as to the sufficiency of stamp will be made on the receipt of the record, and whether the appeal, application or reference is or is not within the jurisdiction of a Judge sitting alone ;

**Proviso..... Deleted**

- 14-A<sup>[2]</sup> The stamp reporting shall be done as early as possible within 3 days from the date of filing and defects, if any, shall be notified by the Deputy Registrar on the next earliest Tuesday or Friday, as the case may be, along with the Supplementary Cause List and a copy thereof shall be sent to the Secretary, Bar Association for removal of defects.
- 14-B (1) In case the defect/defects is/are not removed within 5 days, from the date of publication of the defects the matter shall be placed before the **\*Deputy Registrar**, who may, if he thinks it, grant reasonable time for removal of defects.
- 14-B (2) The Deputy Registrar shall hold Law Zima Court for two days in a week usually, on Tuesday and Friday, for the purpose of removal of defects notified under Rule 14-A.
- 14-C If the defects is/are not removed within the time granted by the **\*\*Deputy Registrar**, the matter shall be placed before the Bench for dismissal and it shall be dismissed, unless application explaining the reason for non-removal of the defect/s has been/is filed for extension of time.

---

[2] Inserted vide C.S No.35.

\* & \*\* The word “ Deputy Registrar” substituted by the word “Registrar” vide c.s. No.40.

N.B. 14-B & 14-C renumberd as 14-B(1) & 14-B (2) vide C.S. No.40

N.B. Proviso appended to Rule 14 deleted vide C.S, No.34

15. Every memorandum of appeal under section 44 (2) of the Orissa Hindu Religious Endowment Act shall be dealt with according to the procedure provided for appeals against orders.
16. (a) The Stamp Reporter shall prepare copies of the stamp report in quadruplicate. One copy of the report will be given to the <sup>[3]</sup> **Deputy Registrar**, another copy will be affixed to the Court's notice board, the third copy will be on record and the fourth copy will be with the Stamp Reporter.  
  
(b) <sup>[4]</sup> On receipt of the report of the Stamp Reporter the Deputy Registrar shall notify the defects, if any, pointed out by the Stamp Reporter, to the Bar Association on the next earliest Tuesday or Friday, as the case may be, along with the Supplementary Cause List.
17. If a memorandum of appeal is not barred by limitation, is sufficiently stamped and complies with the provisions of these rules, the Registrar shall –
  - (a) in the case of an appeal from an original decree, admit it and issue notice to the respondent;
  - (b) in the case of an appeal under Article 4 of the Orissa High Court Order, 1948, read with clause 10 of the Letters Patent constituting the High Court of Judicature at Patna, order it to be laid before the Bench to which such appeals are assigned.
  - (c) in the case of any other appeal an application under section 115 of the Code of Civil Procedure or under section 25 of the Provincial Small Cause Courts Act, they shall be placed before the Bench for admission.
18. If a memorandum of appeal, other than an appeal from original decree or an application is not in proper form and the appellant or applicant does not amend it within the time fixed by the Registrar, the Registrar shall lay it as soon as possible before a Bench for orders.
19. Every memorandum or application for which the stamp cannot be ascertained until the receipt of the record, shall as soon as possible after the receipt of the record, be examined by the Stamp Reporter, who shall then endorse on it his report as to the sufficiency of the stamp and shall send it to the Registrar for orders.

---

[3] & [4] substituted vide c.s. No.36

20. Whenever the Stamp Reporter finds that a document which ought to bear a stamp under the Court-Fees Act, 1870 has been through mistake or inadvertence received, filed or used in the Court without being properly stamped, he shall report the fact to the Advocate who presented such document. Such Advocate shall at once initial the report and shall within three weeks thereafter or within such further time as the Taxing Officer may allow note on it whether he accepts or disputes the accuracy thereof. If such note is made within such time, it shall not be open to such Advocate to dispute the accuracy of the report.

NOTE—The Chief Justice has been pleased to declare that the Registrar of the High Court shall be the taxing officer within the meaning of section 5 of the Court-Fees Act, VII of 1870.

21. No copy of a decree or judgment presented or filed with a memorandum of appeal or with an application for revision or review which has been admitted shall be returned. Every such copy shall remain with the record of the appeal or case in revision to which it belongs.
22. No affidavit accompanying an application for review shall be returned whether such application has been admitted or not.
23. When on any application for revision or review the record is sent for, it shall, when received, be laid before the Judge or Judges who made the order, for a decision as to whether the application is to be admitted or rejected.
24. Every application for stay of execution under Order XIX rule 5 of the Code of Civil Procedure shall specifically state that it is made under that rule, and it shall be accompanied by an affidavit stating specifically the fact upon which the application is based, the date of the decree or order the stay of the execution of which is desired, the date of the order, if any, for execution or sale, the date, if any, fixed for the sale, and the facts necessary to enable the Court to be satisfied of the matters mentioned in Order XLI, rule 5, sub-clause (3) of the Code of Civil Procedure.
25. Wherever any *ex parte* interim order granting stay, injunction, etc., is passed in an appeal or case (not being a criminal case), it shall be taken as implied therein, unless otherwise specifically directed, that the communication to the lower Court regarding interim relief is to be made only simultaneously with the issue of the notice thereof to the opposite-party.
26. If the requisites for issue of notice are not filed within a week of the date of the order, the application for stay shall be posted before the Court or the Registrar, as the case may be, for vacating the said interim order.
27. When the requisites for notice with reference to any interim order are filed before 3 P.M. on any day, the order shall be communicated to the lower Court

and the notice shall be issued on that very day. In order to ensure this, there shall be a clearance of the Talbanas filed by 3 P.M. on every day.

28. In all cases of *ex parte* interim order, the matter shall be put up to the Court or the Registrar, as the case may be, for further orders according as occasion therefore arises from time to time but not later than a week from the date it becomes ripe for being so posted.
29. Every application for security under Order XLI, rule 6 or 10 of the Code of Civil Procedure shall state specifically under which rule it is made and shall be accompanied by an affidavit stating specifically the facts upon which the application is based.
30. Every application for the re-admission or restoration of an appeal or application dismissed for default of appearance, shall be accompanied by an affidavit stating the circumstances under which such default was made and whether or not the party whose appeal or application was dismissed had, previously to such dismissal, engaged an Advocate to conduct the appeal or application. In case any Advocate was employed, the affidavit shall further state, on the personal knowledge of the deponent and not on information and belief only, the name of such advocate, the date when he was so employed, the amount of the fee agreed to be paid to him and the date when such fee was fully paid to him.
31. On any Court day on which no Bench is or has been sitting, any memorandum of appeal or application which might be barred by time and which is entertainable only by a Bench may be presented to the Registrar, or in his absence from Court on that day, to the Deputy Registrar, or in their absence to any other officer of the Court so authorised, who shall certify thereon that such memorandum of appeal or application was on that day presented to him :

Provided always that no such presentation to the Registrar, Deputy Registrar or any other Officer so authorised shall be of any effect, unless such memorandum of appeal or application be presented to a Bench on the next subsequent day on which a Bench is sitting.

32. If on any Court day the Registrar is absent, any memorandum of appeal or application which should, under these rules, be presented to him which might be barred by time, may be presented to the Deputy Registrar or in his absence to any other officer of the Court so authorised who shall certify thereon in writing under his hand that such memorandum of appeal or application was on that date presented to him :  
Provided always that no such presentation to the Deputy Registrar or any other officer of the Court shall be of any effect unless such memorandum or application be presented to the Registrar on the next subsequent day on which the Registrar is sitting for the hearing of applications.

33. No application to the same effect or with the same object as a previous application upon which a Judge has passed any order other than an order of reference to another Judge or Judges shall except by way of appeal, be



presented to any other Judge or Judges on behalf of any person on whose behalf such previous application was presented.

34. Interim relief by way of stay or injunction, etc. shall not be ordinarily granted in any appeal or revision before the same is admitted.

Exceptionally urgent matters may be put up before the Bench for orders when a memorandum signed by Counsel for the party stating special circumstances is filed.

35. <sup>[5]</sup> In all proceedings where the State of Orissa or the Union of India or Public Officers both of State Government or Central Government without the State or the Union of India being arrayed, are parties, and appearance is/has been entered by the Advocate-General, Government Advocate or the Standing Counsel/Counsel appointed on that behalf for the State of Orissa or the Union of India or for such officers as the case may be, such appearance shall be taken as appearance for the entire matter and no further notice from the Court should issue to the parties represented by such advocate or counsel.

---

[5] Inserted vide c.s. No. 04