

## CHAPTER XV

### **Applications under Article 226, 227 and 228 of the Constitution and Rules for the issue of writs under the said Articles (except writs in the nature of Habeas Corpus)**

- [1] 1(a) An application for direction or writ of mandamus, prohibition, quo warranto, certiorari or any other direction or order under Article 226 of the Constitution or an application under Article 227 of the Constitution will be addressed to the Chief Justice and His Companion Justices of this Court and will be placed before such Division Bench or Single Judge as the Chief Justice may direct by a general or special order.
- (b) Unless directed otherwise, the following categories of cases will be placed before a Division Bench:
- (i) Writ Petitions relating to Public Interest Litigation.
  - (ii) Writ Petitions challenging the vires of any Act or any Statutory Order, Rule or Regulation.
  - (iii) Writ Petition against orders of SAT, CAT and relating to service of employees/officers of Judiciary.
  - (iv) Writ Petitions relating to admission into and recognition/affiliation of technical and professional educational courses **\*and all residuary matters relating to those cases.**
  - (v) Writ Petitions in the nature of Habeas Corpus including all Writ Petitions pertaining to illegal detention.
  - (vi) Writ Petitions relating to Income Tax, Wealth Tax, Gift Tax, Central Excise, Customs Duty, Entry Tax, Value Added Tax, State Excise, Service Tax and Sales Tax.
  - (vii) Writ Petitions relating to Tenders.
  - (viii) Writ Petitions regarding D.R.T. and Bank Securitization, RDBI Act, OSFC and BIFR.
  - (ix) Writ Petitions under Orissa Estate Abolition Act, 1951.
  - (x) Writ Petitions relating to Lease and the Orissa Government Land Settlement Act, 1962.
  - (xi) Writ Petitions under the Special Courts Act.

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[1] substituted vide C.S No.83

\*substituted vide Court's Notification No.520 Dtd. 24.07.2015

- (xii) \*\* Writ Petitions relating to Moveable and immovable properties of Hindu Religious Endowments and Wakfs.
- (xiii) Writ Petitions against the orders passed by the Orissa Electricity Regulatory Commission.
- (xiv) Writ Petitions relating to Mines and Minerals.
- (xv) Writ Petitions under the Land Acquisition Act.
- (xvi) \*\*\*Writ petitions against orders and awards of Industrial Tribunal and Labour Court under Industrial Disputes Act, Trade Union Act, Payment of Wages Act, Minimum Wages Act and Factories Act.

Provided that when a Division Bench is not available and in all cases when a Single Judge functions as the Vacation Judge, a Single Judge may entertain an application under Articles 226 or 227 of the Constitution and pass an interim order but no final order shall be passed by such Single Judge.

All other matters will be listed before a Single Judge”.

- [2] 2. (1) In every such application the applicant shall state whether he has or had made any other application to the Supreme Court or the High Court in respect of the same matter and how that application has been disposed of.
- (2) Where an application under Articles 226 or 227 of the Constitution of India is refilled on the same cause of action after being withdrawn, the same shall be listed before the Bench which had permitted the withdrawal and in the event of the said Bench not functioning, the application shall be listed before a Bench constituted with the participation of one of the Judges of the earlier Bench.
- (3) In the event the applicant makes an application to the Supreme Court in respect of the same matter during the pendency of the application in the High Court, he shall forthwith bring this fact to the notice of the High Court by filing an affidavit in the case and shall furnish a copy of such affidavit to the other side.
- (4) The Court may adjourn the hearing of the application made to it pending the decision of the Supreme Court in the matter.

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[2] Inserted vide C.S. No.48

\*\* substituted vide Court’s Notification No.520 Dtd. 24.07.2015

\*\*\* Inserted vide Court’s Notification No.520 Dtd. 24.07.2015

<sup>[3]</sup> 3. (1) The applications shall be accompanied by a statement setting out the name and description of the applicant and of the party against whom relief is sought and the particulars of the proceeding/proceedings which is/are sought to be challenged or quashed, and the grounds on which it is sought. The same shall also contain the provisions of law under which it is filed, the reliefs sought and the orders or actions impugned in the first few paragraphs. **\*All such particulars as indicated in Appendix-I shall be duly and correctly furnished by the petitioner.**

In the application, the petitioner, after supplying the aforesaid information, shall also incorporate in a separate paragraph whether alternate remedy, if any, available under any statute has been availed or not.

(2) The facts relied on in the application shall be verified by an affidavit.

(3) The application shall be accompanied by a certified copy or certified copies of the relevant order or orders. In case a certified copy of any order is not available in law and attested copy of such order may be filed.

(4) The material documents referred to or relied upon in the application shall also be filed along with the application:

Provided that the Court may, in its discretion, dispense with the production of the same.

4. When the direction, order or writ is sought against the Government or a public officer acting or purporting to act in discharge of an official duty under the Government, a copy of the application with annexures, if any, shall be served on the Advocate-General not later than the noon of the day preceding that on which the application is moved. When such direction, order or writ is sought against any Department of the State or any statutory authority or any public officer acting or purporting to act under a statute and there is a Counsel engaged by such Department, authority or officer such a notice shall also be served on such Counsel.

5. <sup>[4]</sup> Every application shall be registered as Writ Petition (Civil) “W.P.(C)” except the application for Habeas Corpus registered as “WPCRL”. Applications under Article 227 of the Constitution arising out of a Suit or a First Appeal shall be registered as Civil Miscellaneous Petition “C.M.P” and arising from any criminal proceeding shall be registered as “**CRLMC**”\*\*.

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[3] Amended vide C.S. No.5, 39 & 49.

[4]Substituted vide C.S. No. 85.

\*added vide c.s. No.84

\*\* Amended vide office order No. 2605(35) Dtd.14.03.2014.

6. <sup>[5]</sup> The record of W.P.(C) or WPCRL and C.M.P /Crl. M.P. except a cases in which a memorandum has been filed for being listed on the day following the date of presentation shall be sent for stamp report from the day following the date of its registration. The Stamp Reporter shall return the record with his report on the next date of receipt thereof.

7. <sup>[6]</sup> In W.P.(C) or WPCRL and C.M.P./ Crl. M.P , defects if any, pointed out by the Stamp Reporter shall be removed within five days from the date of publication of the defects in the supplementary cause list supplied to the High Court Bar Association, failing which the case shall be placed before the Deputy Registrar (Judicial) within three days thereafter for orders.

Provided that the **Deputy Registrar** may refer any matter to the Court for orders.

8. <sup>[7]</sup> When the defects are not removed or when the orders of the **Deputy Registrar** are not complied with, in any case within the time allowed by him, the W.P.(C ) or WPCRL and C.M.P./ Crl. M.P shall be placed before the Bench within three days for **\*\*orders/ appropriate orders.**

9. <sup>[8]</sup> Unless the Court sees no sufficient cause to admit the application and rejects it, notice of the application shall be served on all parties to the proceedings to show cause by a date fixed and where the application relates to any proceedings in or before a subordinate Court or authority and the object is either to compel such Court or any Officer thereof or any authority to do and act in relation to such proceedings or to quash them or any order made therein, notice to show cause shall also be served on such Court or Officer or authority as the case may be, with directions to produce or cause production of the records of the proceeding along with its or his return. Every notice under this rule shall be accompanied by copies of the application and affidavit and annexures, if any.

10. (1) Any answer showing cause against such an application shall, except with the leave of the Court be made by filing an affidavit and by serving copies thereof upon the applicant or his Advocate and also the other opposite-parties who have entered appearance or their Advocates, as the case may be, not later than the date fixed for showing cause.

\*(2) A further reply or counter-affidavit by any party to the proceedings, as the circumstances may require may be filed with the leave of the Court.

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[5]Substituted vide C.S. No. 86.

[6]Substituted vide C.S. No. 87.

[7]Substituted vide C.S. No. 88.

[8] Substituted vide C.S. No.6

\*sub-rule (2) deleted & sub-rule(3) re-numbered as sub-rule(2) vide c.s. No.63

\*\*Amended vide C.S. No.93

N.B. the words 'Deputy Registrar' substituted in place of 'Registrar' in Rule -7& 8 vide C.S. No.41

11. The Court may in its discretion implead any person as party to the proceeding and unless the Court otherwise orders rule nisi together with copies of the petition and the affidavit in support thereof along with annexures, if any, shall be served on all persons directly affected and on such other persons including the person impleaded subsequently as party to the proceeding as the Court may direct:

Provided that if any of the aforesaid persons desires to file any counter-affidavit in reply, he may do so with the leave of the Court and such counter-affidavit shall be filed after service on the petitioner and on the opposite-party within a week from the date of the order.

12. Upon making the order for a rule nisi the Court may, if it thinks fit, grant such *ad interim* relief to the petitioner as the justice of the case may require upon terms, if any, as it may consider just and proper.
13. A list of cases ready for admission and hearing shall be prepared and published in accordance with rule 16, Chapter IX.
14. On admission of the case, notice shall issue on the day following the date of filing of the requisites in accordance with rules.
15. The indexing cost of Rs.5 required to be deposited under Rule 16 shall be paid unto the Court within ten days of the date of admission or direction by the Bench for issue of notice on admission and hearing of the Original Jurisdiction Case, failing which the procedure indicated in Rule 8 shall be followed.
16. On deposit of the indexing costs as required by Rule 15 the office will prepare a combined table of contents of all the papers filed by the parties in support of or in opposition to the application. Such table of contents shall be attached to the paper books prepared for the Court and copies of such table of contents shall also be supplied to the parties before the case is made ready for hearing.
17. All questions arising for determination under this Chapter shall ordinarily be decided upon affidavits, but the Court may direct that such questions as it may consider necessary be decided on such other evidence as it may deem fit. Where the Court orders that certain matters in controversy between the parties shall be decided on such evidence, the procedure prescribed in the Code of Civil Procedure, 1908 for the trial of suits shall so far as applicable be followed.
18. In case of difference of opinion between the Judges composing the Division Bench, the application shall be referred to and heard by such Judge or Judges either sitting apart from or with the differing Judges as the Chief Justice may direct, and shall be decided according to the opinion of the majority of the Judges who have heard the application including those who first heard it.
19. The Court may impose such terms as to costs and security as it thinks fit.

20. (1) Annexures to writ petitions shall be numerically marked with the figures 1, 2, 3 and so on.

(2) Annexures to counters filed by opposite-parties shall be alphabetically marked in manner following.

(3) In a case in which there is only one opposite-party, annexures to the counter filed by such opposite-party shall be marked as A, B, C and so on.

(4) When there are two or more opposite-parties, annexures filed by the first opposite-party shall be marked as A-1, B-1 and C-1, etc. and those filed by other opposite-parties shall be marked as "A-(the number against which the name of the opposite-party filing the counter appears in the writ petition)" and "B-(the number against which the name of the opposite-party filing the counter appears in the writ petition)", etc. For example, when opposite-party No.9 files annexures, he should mark those as A-9, B-9 and C-9, etc.

(5) When two or more of the opposite-parties file a joint counter with annexures, the annexures shall be marked as "A-(the number against which the name of the foremost of the opposite-parties filing the joint counter appears in the writ petition)" and "B-(the number against which the name of the foremost of the opposite-parties filing the joint counter appears in the writ petition)", etc. For example, if opposite-parties Nos. 2, 3 and 9 file a joint counter, the annexures will be marked as A-2, B-2 and C-2, etc."

(6) When documents are called for and taken to record at the instance of the Court and neither party is willing to have those marked as annexures on his behalf, those shall be marked as I, II and III, etc.

21. (1) The writs issued by the Court shall be served on the opposite-parties in person.

(2) The petitioner who will succeed in the writ petition shall pay to the Court, for the purpose of issue of the writs, process fee of Rs.4.50 for the first four persons and Re.0.75 for each of the other opposite-parties, as well as two sets of registered postal requisites with acknowledgement due for each opposite-party within three days of the date of delivery of judgment:

Provided that if there are more opposite parties than one residing within the jurisdiction of the same serving Court, as many postal requisites with acknowledgement due along with one extra set shall only be filed :

Provided further that if the requisites are not filed within the prescribed period, the case shall be placed before the Bench immediately for appropriate orders.

(3) If the opposite-party on whom the writ is to be served resides in the State of Orissa, the writ in duplicate duly addressed to him shall be despatched by registered post with acknowledgment due to the Court within the jurisdiction of which the opposite-party ordinarily resides. If an opposite-party resides outside

the State of Orissa the writ in duplicate addressed to the said opposite-party shall be sent to the Court within the jurisdiction of which he ordinarily resides. While despatching the writ in duplicate, one set of postal requisites with acknowledgement due shall be attached to facilitate the serving Court to despatch the duplicate copy with service report by registered post with acknowledgement due.

(4) The serving Court after due personal service of the writ on the opposite-party shall submit such report of service on the duplicate copy of the writ and despatch the same to this Court by registered post with acknowledgement due.

22. Every order passed on civil applications under Article 226 of the Constitution including any order as to costs shall be drawn up as if it were a decree and shall be executable as a decree in manner provided in Chapter XXVIII..
23. These rules shall apply so far as practicable to applicants under Articles 227 and 228 of the Constitution.