

## **Trial Courts and First Appellate Subordinate Courts Rules, 2010**

*GAD Letter No. GDC-15/CM/2010, dt. 3.3.2010*

In exercise of the powers conferred by section 102 of the Constitution of Jammu and Kashmir, section 122 of the Code of Civil Procedure, Samvat 1977 (X of 1977), section 8 of the Jammu and Kashmir State Civil Courts, Act, Samvat 1977 and Clause 26 of the Letters Patents (Jammu and Kashmir) and all other powers enabling it in this behalf, the High court of Jammu and Kashmir, with the prior approval of the Governor, hereby makes the following Rules, namely:-

### **DIVISION OF CIVIL SUITS AND APPEALS INTO TRACKS:**

1. Based on the nature of dispute, the quantum of evidence to be recorded and the time likely to be taken for the completion of suit, the suits shall be channeled into four tracks; Track 1 may include suits for maintenance, divorce and child custody and visitation rights, grant of letters of administration and succession certificate and simple suits for rent or for eviction (upon notice under section 106 of the Transfer of Property Act). Track 2 may include money suits and suits based solely on negotiable instruments. Track 3 may include suits concerning partition and like property disputes, trade marks, copyrights and other intellectual property matters. Track 4 may include any other matter. All effort shall be taken for complete disposal of the suits in Track 1 within a period of 9 months in Track 2 within a period of 12 months and in Tracks 3 and 4 within a period of 24 months from the date of institution of a suit.

This categorization is illustrative and it will be for the Judge concerned to make an appropriate assessment as to which track any case can be assigned to.

2. Once in a month, the Registry/administrative staff of each court shall prepare a report showing the stage and progress of cases which are proposed to be listed in

the next month and place the report before the Court. When the matters are listed on each day, the Judge concerned may take such decision as he may deem fit in the presence of counsel/parties in regard to each case for removing any obstacles in service of summons, completion of pleadings, etc. with a view to make the case ready for disposal.

3. The Judge referred to in rule 2 above, may shift a case, from one track to another, depending upon the complexity and other circumstances of the case.

4. Where computerization is available, the monthly data shall be fed into the computer in such a manner that the Judge referred to in rule 2 above, would be able to ascertain the position and the stage of every case in every track from the computer screen. Where computerization is not available, the monitoring must be done manually.

5. The Judge referred to in rule 2 above, shall monitor and control the flow or progress of every case, either from the computer or from the register or data placed before him in the above manner or in some other manner he may innovate.

## **II ORIGINAL SUIT**

### **1. Fixation of time-limits while issuing notice**

(a) wherever notice is issued in a suit, the notice shall indicate that the Code prescribes a maximum period of 30 days for filing written statement (which for special reasons may be extended up to 90 days) and, therefore, the defendants may prepare the written statement expeditiously and that the matter shall be listed for that purpose on the expiry of eight weeks from the date of issue of notice (so that it can be a definite date). After the written statement is filed, the replication (if any, proposed and permitted), shall be filed within six weeks of receipt of the written statement. If there are more than one defendant, each one of them shall have to comply with this requirement within the specified limit.

(b) The notice referred to in clause (a) shall be accompanied by a complete copy of the plaint and all its annexures/enclosures and copies of the interlocutory applications, if any.

(c) if interlocutory applications are filed along with the plaint, and if an ex-parte interim order is not passed and the Court is desirous of hearing the respondent, it may, while sending the notice along with the plaint, fix an earlier date for hearing of the application (than the date of filing written statement) depending upon the urgency for interim relief.

### **2. Service of summons/notice and completion of pleadings**

(a) Summons may be served as indicated in clause (3) of Rule 9 Order 5 of Civil Procedure Code.

(b) In the case of service of summons by the plaintiff or a courier where a return is filed that the defendant has refused notice, the return shall be accompanied by an undertaking that the plaintiff or the courier, as the case may be, is aware that if the return is found to be false, he can be punished for perjury or summarily dealt with for contempt of court for abuse of the provisions of the Code. Where the plaintiff comes forward with a return of 'refusal', the provisions of the Order 9-A Rule 4 Civil Procedure Code shall be followed by reissue of summons through court.

(c) In cases where service of summons under rule 9 Order 5 Civil Procedure Code is not possible, the provisions of Rule 17 Order 5 Civil Procedure Code shall apply and the plaintiff shall within 7 days from the date of its inability to serve the summons, request the court to permit substituted service. The dates for filing the written statement and replication, if any, shall accordingly stand extended.

### **3. Calling of cases (hazri or call work or roll-call)**

The formal listing of a case shall be made before a nominated senior officer of the Registry which shall be one or two days before the listing in the Court. He may give dates in routine matters for compliance with earlier orders of the Court. Cases shall be listed before the Court only where an order of the Court is necessary or where an order prescribing the consequences of default or where a peremptory order or an order as to costs is required to be passed on the judicial side. Cases which have to be adjourned as a matter of routine for taking steps in the suit or proceeding shall not be unnecessarily listed before the Court. Where parties/counsel are not attending before the court officer or are defiant or negligent, their cases may be placed before the Court. Listing of cases on any day before a Court shall be based on a reasonable estimate of time and number of cases that can be disposed of by the Court in a particular day. The courts shall, therefore, dispense with the practice of calling all the cases listed/adjourned to any particular day and the cases shall first be listed before a nominated senior officer of the Court, nominated for the purpose.

### **4. Procedure on the grant of interim orders**

(a) If an interim order is granted at the first hearing by the Court, the defendants shall have the option of moving appropriate applications for vacating the interim order even before the returnable date indicated in the notice and if such an application is filed, it shall be listed as soon as possible even before the returnable date.

(b) If the court passes an ad interim ex-parte order in interlocutory application, and the reply by the defendants is filed, and if, thereafter, the plaintiff fails to file the rejoinder (if any) without any material reason for the delay, the Court shall have to reconsider the stay or interim order passed by it and shall list the case for that purpose so as to prevent the parties from taking the adjournment with a view to have undue benefit of the ad interim orders. The plaintiff may, if he so chooses also waive his right to file a rejoinder. A communication of option by the plaintiff not to file a rejoinder made to the Registry shall be deemed to be the completion of pleadings in the interlocutory application.

### **5. Referral to alternative dispute resolution**

In the hearing before the Court, after completion of pleadings, time-limit for discovery and inspection, and admission and denials, of documents shall be fixed preferably restricted to 4 weeks each.

After the completion of admission and denial of documents by the parties, the suit shall be listed before the Court (for examination of parties under Order 10 of the Civil Procedure Code. A joint statement of admitted facts shall be filed before the said date). The Court shall thereafter, follow the procedure prescribed under the Alternative Dispute Resolution and Mediation Rules, 2009.

## **6. Procedure on the failure of alternative dispute resolution**

On the filing of report by the Mediator under the Mediation Rules that efforts at mediation have failed, or a report by the Conciliator under the provisions of the Jammu and Kashmir Arbitration and Conciliation Act, 1997, or a report of no settlement in the Lok Adalat under the provisions of the Jammu and Kashmir Legal Services Authority Act, 1997 the suit shall be listed before the Registry within a period of 14 days. At the said hearing before the Registry, all the parties shall submit the draft issues proposed by them. The suit shall be listed before the Court within 14 days thereafter for framing of issues.

When the suit is listed after failure of the attempts at conciliation, arbitration or the Lok Adalat, the Judge may merely inquire whether it is still possible for the parties to resolve the dispute. This should invariably be done by the Judge at the first hearing when the matter comes back on failure of conciliation, mediation or Lok Adalat.

If the parties are not keen about settlement, the Court shall frame the issues and direct the plaintiff to start examining his witnesses. The procedure of each witness filing his examination-in-chief and being examined in cross or re-examination shall continue, one after the other. After completion of evidence on the plaintiff's side, the defendants shall lead evidence likewise, witness after witness, the chief-examination of each witness being by the affidavit and the witness being then cross-examined or re-examined. The parties shall keep the affidavit in chief examination ready whenever the witness's examination is taken up. As far as possible, the evidence shall be taken up day by day as provided under (a) of the proviso to sub-rule 2 of Rule 1, Order 17 Civil Procedure Code. The parties shall also indicate the likely duration for the evidence to be completed, and for the arguments to be thereafter heard. The Judge shall ascertain the availability of time of the Court and shall list the matter for trial on a date when the trial can go on from day to day and conclude the evidence. The possibility of further negotiation and settlement shall be kept open and if such a settlement takes place, it shall be open to the parties to move the Registry for getting the matter listed at an earlier date for disposal.

## **7. Referral to the Commissioner for recording of evidence**

(a) The High Court shall conduct an examination on the subjects of the Code of Civil Procedure and the Evidence Act. Only those Advocates, who have passed an examination conducted by the High Court on the subjects of Code of Civil Procedure and the Evidence Act, shall be appointed as Commissioners for recording evidence. They shall be ranked accordingly to the marks secured by them.

(b) The Court shall not appoint a Commissioner in every case for recording of evidence. Only if the recording of evidence is likely to take a long time, or there are any other special grounds, the Court shall consider appointment of a Commissioner for recording the evidence. The Court shall direct that the matter be listed for arguments fifteen days after the Commissioner files his report with the evidence.

The Court may initially fix a specific period for the completion of the recording of evidence by the Commissioner and direct the matter to be listed on the date of expiry of the period, so that it may know whether the parties are cooperating with

the Commissioner and whether the recording of evidence is getting unnecessarily prolonged.

(c) Every Commissioner shall file an undertaking before the Court upon his appointment that he shall keep the documents handed over to him and those that may be filed before him, safe and shall not allow any party to inspect them in the absence of the opposite party/counsel. If there is delay of more than one month in the dates fixed for recording evidence, he shall return the file to the Court and take it back on the eve of the adjourned date.

## **8. Costs**

The costs shall invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on a number of other issues or points which were unnecessarily raised, costs shall be appropriately apportioned. Special reasons shall have to be assigned if costs are not being awarded. Costs shall be assessed according to rules in force. If any of the parties has unreasonably protracted the proceedings, the Judge shall consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.

## **9. Proceedings for perjury**

If the trial court, while delivering the judgment, is of the view that any of the parties or witnesses have willfully and deliberately uttered blatant falsehoods, he shall consider whether it is a fit case where prosecution should be initiated for perjury and order prosecution accordingly.

## **10. Adjournments**

When a suit is listed before a court and any party seeks adjournment, the court shall have to verify whether the party is seeking adjournment due to circumstances beyond the control of the party, as required by clause (b) of the proviso to sub-rule 2 of Rule 1, Order 17 Civil Procedure Code. The court shall impose costs as specified in sub-rule 2 of Rule 1, Order 17 Civil Procedure Code.

## **11. Miscellaneous applications**

The proceedings in a suit shall not be stayed merely because of the filing of miscellaneous application in the course of suit but only after the court in its discretion expressly thinks it necessary to stay the proceedings in the suit.

# **III. FIRST APPEALS TO SUBORDINATE COURTS**

## **1. Service of notice of appeal**

In view of the amended Civil Procedure Code and the clarification by the Supreme Court, the requirement of filing a copy of the appeal memorandum in the subordinate Courts does not mean that the appeal Memorandum cannot be filed in the appellate court immediately for obtaining interim orders an advance notice shall simultaneously be given by the counsel to the party who is proposing to file the appeal, to the counsel for the opposite party who appeared in the subordinate court so as to enable the respondents to appear if they so choose, even at the stage of first hearing.

## **2. Essential documents to be filed with the memorandum of appeal**

The appellant shall, as far as possible, file, along with the appeal, copies of essential documents marked in the suit, to enable the appellate court to understand the points raised or for purpose of passing interim orders.

## **3. Fixation of time-limits in interlocutory matters**

Whenever a notice is issued by the appellate court in interlocutory matters, the same must indicate the date by which the reply should be filed. The rejoinder, if any, shall be filed within four weeks of receipt of the reply. If there are more parties than one who are respondents, each one of the respondents shall comply with this requirement within the time-limit and the rejoinder may be filed within four weeks from the receipt of the last reply.

## **4. Steps for completion of all formalities / (call work) (hazri)**

The appeal shall be listed before the Registry for completion of all formalities necessary before the appeal is taken up for final hearing. The procedure, indicated above, of listing the case before a senior officer of the appellate court Registry for giving dates in routine matters shall be followed to reduce the 'call work' (hazri) and only where judicial orders are necessary, such cases shall be listed before the Court.

## **5. Procedure on grant of interim orders**

If an interim order is granted at the first hearing by the Court, the respondents shall have the option of moving appropriate application for vacating the interim order even before the returnable date indicated in the notice and if such an application is filed, it shall be listed as soon as possible even before the returnable date.

If the Court passes an ad interim ex-parte order, and if the reply is filed by the respondents and if, without any material reason appellant fails to file the rejoinder, the Court shall reconsider the stay or interim order and list the case for that purpose so that the party who has obtained ad interim order do not procrastinate in filing the reply. The appellant may also waive his right to file the rejoinder. Such choice shall be conveyed to the Registry on or before the date fixed for filing of rejoinder. Such communication of option by the applicant to the Registry shall be deemed to be completion of pleadings.

## **6. Filing of written submissions**

Both the appellants and the respondents shall have to submit their written submissions two weeks before the commencement of the arguments in the appeal. The case list shall indicate if written submissions have been filed or not and wherever they have not been filed, the Court shall insist on their being filed within a particular period to be fixed by it and each party shall have to serve a copy thereof on the opposite party before the date of commencement of arguments. There is no question of parties filing replies to each other's written submissions.

The Court may have a caution list/alternative list to take care of eventualities when a case does not go on before a court, and those cases may be listed before a court where, for any reason, the scheduled cases are not taken up for hearing.

## **7. Costs**

The costs shall invariably follow the event and reasons shall be assigned by the appellate court for not awarding costs. If any of the parties have unreasonably protracted the proceedings, the court shall have the discretion to impose exemplary costs after taking into account the costs that may have been imposed at the time of adjournments.

## **IV. APPLICATION/PETITION UNDER SPECIAL ACTS**

This chapter deals with applications/petitions filed under Special Acts like the Industrial Disputes Act, Hindu Marriage Act, Succession Act, etc.

The practice directions in regard to original suits shall mutatis mutandis apply in respect of such applications/petitions.

## **V. CRIMINAL TRIALS AND CRIMINAL APPEALS TO SUBORDINATE COURTS**

### **(a) Criminal Trials**

1. The criminal trials shall be classified based on offence, sentence and whether the accused is on bail or in jail. Capital punishment, rape and cases involving sexual offences or dowry deaths shall be kept in Track I. Other cases where the accused is not granted bail and is in jail, should be kept in Track II. Cases which affect a large number of persons such as cases of mass cheating, economic offences, illicit liquor tragedy and food adulteration cases, etc. shall be kept Track III. Offences which are tried by Special Courts such as POTA, TADA, NDPS, Prevention of Corruption Act shall be kept in rack IV and all, other offences shall b kept in Track V.

All efforts shall be taken for complete disposal of Track I cases within a period of nine months, Track II and Track III cases within a period of twelve months and Track IV and Track V cases within a period of fifteen months.

2. The High Court shall classify criminal appeals pending before it into different tracks on the same lines.

### **(b) Criminal appeals**

1. Wherever an appeal is filed by a person in jail, and also when appeals are filed by the State, as far as possible, the memorandum of appeal may be accompanied by important documents, if any, having a bearing on the question of bail.

2. In respect of appeals filed against acquittals. Steps for appointment of amicus curiae or the State legal aid counsel in respect of the accused who do not have a lawyer of their own shall be undertaken by the Registry/State Legal Services Authority immediately after completion of four weeks of service of notice. It shall be presumed that in such an event the accused is not in a position to appoint counsel.

3. Advance notice shall simultaneously be given by the counsel for the party who is proposing to file the appeal, to the counsel for the opposite party in the subordinate court, so as to enable the other party to appear if they so choose even at the first hearing stage.

## **VI. NOTICE ISSUED UNDER SECTION 80 OF THE CODE OF CIVI PROCEDURE**

Every public authority shall appoint an officer responsible to take appropriate action on a notice issued under section 80 of the Code of Civil Procedure. Every such officer shall take appropriate action on receipt of such notice. If the Court finds that the officer concerned, on receipt of the notice, failed to take necessary action or was negligent in taking the necessary steps, it shall hold such officer responsible and recommend appropriate disciplinary action by the authority concerned.

#### **VII. EFFECTS OF INCONSISTENCY**

Whenever there is any inconsistency between these Rules and the provisions of either the Code of Civil Procedure, Samvat 1977 (1920 A.D.) or the Code of Criminal Procedure, Samvat 1989 (1933 A.D.) or the High Courts Rule or any other statutes, the provisions of such Codes and statutes shall prevail.

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