



The
PESHAWAR HIGH COURT
Peshawar

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.

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No. 1523-1622 /Admn:

Dated Pesh the 7/2 /2018

To:

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of KPk, Law Department, Peshawar.
3. The Secretary to Government of KPk, Home Department, Peshawar.
4. The Secretary to Government of KPk, Establishment Department, Peshawar.
5. All the District & Sessions Judges/ZQs in the Khyber Pakhtunkhwa.
6. All the Judicial/Principal Officers in Peshawar High Court, Peshawar.
7. All the Additional Registrars of the Peshawar High Court Benches.
8. All the PS to Hon'ble Judges in the Peshawar High Court, Peshawar.
9. The Librarian, Peshawar High Court, Peshawar.

Subject: **AMENDMENTS IN FIRST SCHEDULE OF THE CODE OF CIVIL PROCEDURE, 1908.**

Dear Sir,

Attached please find herewith gazette copy of notification No.15-J/2018 dated 23.01.2018, for information and further appropriate action.

Sincerely yours,


REGISTRAR



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 29TH JANUARY, 2018

THE PESHAWAR HIGH COURT, PESHAWAR

NOTIFICATION

Peshawar, dated: 23.01.2018.

NO. 15-J/2018.---In exercise of the powers conferred by section 122 of the Civil Procedure Code, 1908 (Act No. V of 1908), the Peshawar High Court, Peshawar, is pleased to direct that in the First Schedule of the Code of Civil Procedure, 1908, the following further amendments shall be made, namely:

AMENDMENTS

- (1) In Order-V, in rule 20, in sub-rule (1),-
 - (a) in clause (b), after the word "television", the words "short message service, electronic mail etc." shall be added; and
 - (b) in clause (c), after the word "press", the words "or publication on the official website of the Court" shall be added.
- (2) In Order-VI, in rule 17, for the words "The Court may at any stage of the proceedings", the words "Subject to the provisions of Order-IX-A, the Court may, before framing of issues." shall be substituted.
- (3) In Order-VII, for rule 21, the following shall be substituted, namely:

"21. Consequences for filing incorrect address or failure to file address.---Where a plaintiff or petitioner files incorrect address or fails to file an address, in order to mislead the Court, for service, he shall be liable to have his suit dismissed or his petition rejected by the Court suo moto or any party may apply for an order to that effect, and the Court may make such order as it thinks just."
- (4) After Order-IX, the following new Order-IX-A shall be inserted, namely:

“Order IX-A
Case Management and Scheduling Conference

1. **Case management and scheduling conference.**---(1) The Court shall, under its own supervision, in each and every case, after receiving a plaint, petition or appeal, as the case may be; and having regard to the provisions of the Code and these rules, start case management and scheduling conference. For the purpose of these rules case management and scheduling conference means and includes:

- (i) expeditious disposal of the cases;
- (ii) establishing an early and continuing control of the Court over the case, so that it cannot be protracted because of lack of management;
- (iii) discouraging wasteful pre-trial activities;
- (iv) improving the quality of trial through more thorough preparation of the case by the parties and their counsel;
- (v) encouraging the parties to cooperate with each other in conducting the Court proceedings;
- (vi) fixing time tables or otherwise controlling progress of the case;
- (vii) giving directions to ensure that the trial of a case proceeds quickly and efficiently; and
- (viii) for facilitation of the parties, if so required, seeking consultation of the parties or their counsel in the case management and scheduling conference through telephone, mail or other modern technologies:

Provided that in case the Court does not call for such conference, it shall be bound to record reasons for not doing so.

(2) At any conference under this rule, the Court may take appropriate action and pass a scheduling order with respect to-

- (i) the formulation and simplification of issues, including elimination of frivolous claims and defenses;
- (ii) the necessity or desirability of amendments in the pleadings;
- (iii) the necessity or desirability of joining other parties;
- (iv) the necessity or desirability of any local inspection through commission;
- (v) obtaining proposed exhibits from the parties and scrutinizing them within the mandate of Order-XIII, and identifying witnesses;

- (vi) determining the appropriateness and timing of summary judgment under Order-XV;
 - (vii) control of discovery through discovery management;
 - (viii) disposal of pending miscellaneous applications;
 - (ix) conducting trial management for a speedy trial; and
 - (x) facilitating the just, speedy and inexpensive disposal of cases.
- (3) Seven days prior to conducting any case management and scheduling conference for hearing of the applications, discovery, settlement or trial, the Court shall serve the agenda items of the conference to the parties or their counsel through proformas-A, B, C and D, as specified in the Fifth Schedule.

2. Management and disposal of miscellaneous applications.---(1) The Court shall manage the miscellaneous applications, arising out of the suits or proceedings, in the following manner:

- (a) the Court, after consultation with the parties and or their counsel, shall fix the following three dates:
 - (i) a date by which the parties shall file any of the applications under this Court, required for completion of pleadings, or any other equity based applications, and shall provide copies of such applications to the other party or parties, as the case may be;
 - (ii) another date by which the parties shall file written replies to such applications, and shall give copies of written replies to the opposite parties; and
 - (iii) a third date by which unless the hearing is adjourned, the applications shall be disposed of:

Provided that the whole proceedings, under this clause, shall be completed within a maximum period of sixty (60) days, commencing from the date of attendance of the parties;

- (b) no opportunity shall be provided to any party for making any such applications, if he opts not to file such applications or reply thereto, after exhausting the opportunity provided under clause (a);

- (c) any order made under this rule shall not be appealable or revisable except in an appeal or revision, as the case may be, in the main case; and
 - (d) if it is not convenient to decide all the applications collectively, the Court may decide them separately by making a fixed schedule for their disposal, subject to the provisions of clause (a).
- (2) **Discovery management and scheduling orders.**---After completion of pleadings, in accordance with the nature of the litigation, the Court shall fix a time schedule, which shall not exceed thirty (30) days, in any case, for-
- (a) developing consultation with the parties or their counsel, as the case may be, a factual and legal statement of controversy;
 - (b) employing all or any modes of litigant conducted investigation, as specified in Orders-X, XI and XII of the Code; and
 - (c) requiring parties or their counsel, as the case may be, to submit their proposed exhibits along with proforma-E, as specified in Fifth Schedule, and conducting their scrutiny in accordance with the mandate of Order-XIII of the Code.
- (4) **Trial management and scheduling orders.**---Before or after framing of the issues, if the case is not summarily decided and is fixed for trial, then the Court in consultation with the parties or their counsel, as the case may be, shall, within seven days, establish a time schedule for-
- (a) presenting and exchanging the list of witnesses, which the parties intend to produce in the Court either to give evidence or produce documents, on the proformas-F1 and F2, as specified in the Fifth Schedule;
 - (b) procuring the certificates of readiness from the parties to produce their witnesses and documentary evidence in the Court on proforma-G, as specified in the Fifth Schedule; and
 - (c) proceeding with the trial in accordance within the time schedule, within which, the parties shall be bound to present their evidence and cross examine each other's witnesses. All efforts shall be made by the Court to hold *de die in diem* trials:

Provided that the Court shall conduct the trial within a period of one (01) year.

- (5) **Settlement conference and scheduling order.**---At any stage during the proceedings of a case, the Court with the consent of the parties, may employ any of the modes of settlement of dispute for expeditious disposal of the case.
- (6) **Penalty for default in case management.**---If a party or his counsel fails to appear at a case management and scheduling conference, or is substantially unprepared to participate, or does not participate in good faith in the conference, or fails to obey a case management and scheduling order, the Court, in addition to any other penalty under this Code, shall order the party to pay reasonable expenses, unless such non-compliance was substantially justified or other circumstances made an award of expenses unjust or impose a fine. All orders under this rule shall be made justly and fairly, notwithstanding anything contained in any rule or order for the time being in force. When the non-attendance of a party or his counsel is justified, the Court may adjourn the matter and fix a final date for that matter.
- (7) The provisions of this Order shall mutatis mutandis apply to all the pending cases before any Court.”.
- (5) In Order-XIV, in rule 1, for sub-rule (5), the following shall be substituted, namely:
- “(5) Subject to the provisions of Order-IX-A, if the case is not summarily decided, the Court shall, after examining the plaint and the written statement, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law, the parties are at variance, and shall thereupon proceed to frame and record the issues, within seven days, on which the right decision of the case appears to depend.”.
- (6) After Order-XV, the following new Order XV-A shall be inserted, namely:

“Order XV-A
Summary Judgment

1. Application for summary judgment.---Either party may move an application for summary judgment, identifying the whole claim or defense, or each claim or defense, as the case may be, on which summary judgment is sought, or the Court may grant such summary judgment on its own initiative, if-

- (a) it is satisfied that-

- (i) the respondent has no real prospect of succeeding on such claim or claims or successfully defending such claim or claims, as the case may be; and
 - (ii) there is no genuine dispute as to any material fact requiring a trial and a party is entitled to judgment as a matter of law; or
- (b) the parties agree to have all or part of the claim determined by a summary judgment and the Court is satisfied that it is appropriate to grant summary judgment.

2. Time to file an application.---Subject to the provisions of Order-IX-A, unless the Court otherwise directs to prevent injustice, a party may file an application for summary judgment or the Court may consider the grant of summary judgment on its own initiative at any time after the close of period allowed to the parties for filing list of documents under rule 1 of Order-XIII.

3. Evidence for purposes of summary judgment hearing.---An applicant asserting that a fact cannot be or is genuinely disputed must support the assertion by:

- (a) citing particular parts of any documentary evidence filed with the Court along with the pleadings; or
- (b) showing that the documentary evidence cited does not establish the absence or presence of a genuine dispute or that the respondent cannot produce admissible evidence to support the fact:

Provided, that documentary evidence shall be construed in a manner most favorable to the respondent and any doubts regarding the existence of a genuine issue of material fact shall be resolved against the applicant.

4. Procedure.---(1) When an application for summary judgment is filed, the respondent shall be given at least fourteen (14) days notice of the date fixed for the hearing along with a copy of the application.

(2) The respondent may file a reply to the application for summary judgment, and serve copies on every other party to the application at least seven (07) days before the summary judgment hearing and the applicant may file a rejoinder to the response, and serve copies on every other party to the application at least three (03) days before the summary judgment hearing.

(3) Where the summary judgment hearing is fixed by the Court on its own initiative, any party to the proceedings may file an affidavit citing particular parts of the documentary evidence filed with the Court to support or oppose the notice, issued by the Court to consider grant of summary judgment and serve copies of such affidavit on every other party to the proceedings at least seven (07) days before the summary judgment hearing, and any party may file a response to such affidavit and serve copies on every other party to the proceedings at least three (03) days before the summary judgment hearing.

5. Orders the Court may pass.---After giving notice and allowing the above specified time to respond, the Court may:

- (a) grant summary judgment along with costs;
- (b) dismiss the application along with costs;
- (c) grant partial relief in relation to one or more claims or defenses identified in the application that shall be deemed to be established, unless the trial judge orders otherwise to prevent injustice; or
- (d) issue any other appropriate order with directions about the management of the case.”.

(7) In Order-XX, in rule 1, in sub-rule (2), for the word “thirty”, the word “fifteen” shall be substituted.

(8) In Order-XXI, after rule 103, the following rules shall be added:

104. On the submission of the execution application, and after a notice has been issued and compliance made with Rule 22 and 23 of Order-XXI, the court shall fix a date for a management conference for disposal of the execution petition.

105. In the management conference the court shall determine the validity of objections, if any, and where possible proceed to decide the same summarily.

106. Where the court is of the opinion that there is substance in the objections or the same are prima-facie valid, it shall determine the issue to be resolved.

107. Where the resolution of the issue needs evidence, investigation or inquiry, the court shall determine a schedule for the disposal of the above. The schedule so determined shall in no case be of more than thirty (30) days. Failure to comply with this provision shall be reported to the High Court through proper channel alongwith reasons thereof.

108. The court shall determine the days required for fulfilling Rule 107 and fix the dates on which each party to the objection petition shall be liable to fulfill their responsibilities fixed in the schedule. Failure of the parties or a party to comply with the schedule shall entail costs or penalties as the case may be which may also include dismissal of the stance of the erring party.

109. While determining the costs or monetary penalties, the court shall take into consideration the facts and circumstances of the lapse(s) and the costs shall be compensatory or deterrent and in no case the cost or penalties shall be token.

110. Where stay / injunction has been issued by the appellate/revisional court, the executing court shall forthwith communicate the schedule of the execution to the court issuing the injunction.

111. When the proceedings of Rule 107 are being conducted, the court may appoint a commission to visit the spot to aid the court in determining the controversy.

112. The objections regarding demarcation, if not raised in the suit by the judgment debtor, cannot be raised at the subsequent stage of execution through an objection petition.

113. At any stage of the execution proceedings the court can seek directly from any Government Department or bank or institution or agency, whether or not within the territorial jurisdiction of the court, the details of the assets of the judgment debtor.

114. The court shall seek details of the assets of the judgment debtor from him on the first instance. In case of any concealment, proceedings of perjury and or criminal action shall be initiated against the judgment debtor. Any concealment of assets of judgment debtor by any Government Department, bank or institution or agency shall also entail similar action against them.

115. All objections shall be raised at the first instance and no objection will be entertained afterward.

116. If any objection raised by a person other than a judgment debtor, provisions of pre-execution management conference and scheduling shall be followed mutatis mutandis.

117. The modes of compelling the judgment debtor for his attendance or for completing the execution proceedings may include blockage of his Computerized National Identity Card.

118. Where the decretal amount or a part thereof has been deposited in court, the same shall be deposited in a profitable account in the name of the decree holder or holders or their legal representative(s), as the case may be in accordance with their shares. The profits so accrued shall also be paid to the decree holder or decree holders or their legal representative(s), as the case may be, at the time of payment of the decretal amount."

- (9) In Order-XLI, in rule 1, in sub-rule (2), after the words “arguments or narrative”, the words and comma “and the time schedule of the case, prepared under Order-IX-A” shall be inserted.
- (10) In Order-XLI, in rule 27, in sub-rule (2), after the words “admission”, the words “and the Court shall preferably record the additional evidence itself” shall be inserted.
- (11) In Order-XLI, in rule 30, after the words “some future day”, the words “not exceeding fifteen (15) days” shall be inserted.
- (12) After Fourth Schedule, the following new Schedule shall be added, namely:

"Fifth Schedule

PROFORMA 'A'

IN THE COURT OF CIVIL JUDGE -----

Civil Suit No. /2018

Plaintiff(S)

vs

Defendant(S)

(NOTICE FOR CASE MANAGEMENT AND SCHEDULING CONFERENCE)

WHEREAS the above mentioned suit is pending disposal in this court. Take notice that the undersigned shall hold a Case Management and Scheduling Conference on *(Date)* at *(time)*. The Conference shall be attended by either the parties in person, or through their counsel fully authorised on their behalf and acquainted with the nature and basis of their claims. The Conference shall be conducted on the following agenda items:

- (a) Both the parties will be required to inform the court that they have gone through each other's pleadings, and are aware of the nature and basis of each other's claims.
- (b) Both the parties will be required to inform the court about different applications which they intend to file in the court such as application under Order VII Rule II, Order I Rule 10, Order VI Rule 17, Order XXXIX Rule I & 2, Order XXVI Rule 9 or any other application(s).
- (c) Setting dates, if required: (1) For filling various applications by either party(ies); (2) For filling of reply(ies) to such applications; and (3) For hearing arguments on such applications collectively.
- (d) Both the parties will be required to discover the chance of settlement, and inform the court about the intended mode of settlement.

(CIVIL JUDGE)

PROFORMA 'B'

IN THE COURT OF CIVIL JUDGE
Civil Suit No. /2018
Plaintiff(S)
VS
DEFENDANT(S)

(Notice for Discovery Management and Scheduling Conference)

WHEREAS the above mentioned suit is pending disposal in this court. Take notice that the undersigned shall hold a Discovery Management and Scheduling Conference on *(Date)* at *{Time}*. The Conference shall be attended by either the parties in person, or through their counsel fully authorised on their behalf and acquainted with the nature and basis of their claims. The Conference shall be conducted on the following agenda items:

- (a) Both the parties will be required to inform the court that they have gone through each others' pleadings and are aware of the nature and basis of each others' claim.
- (b) Both the parties will be required to develop a factual and legal statement of controversy through a consultative discourse.
- (c) Both the parties will be required to show their preparedness for their examination under Order X CPC, for admitting or denying allegations of facts laid in the plaint, or written statement (if any) of the opposite party.
- (d) Both the parties will be required to appraise the court, if they like to deliver interrogatories in writing for the examination of the opposite party. If yes, number of interrogatories.
- (e) Both the parties will be required to appraise the court, if they intend to file application for discovery of documents, which are in possession of the opposite party.
- (f) Both the parties will be required to appraise the court, if they intend to inspect the document referred to in the pleadings of either party, and which are in possession of the other party.
- (g) Both the parties will be required to appraise the court if they intend to send notice to the other party to admit some documents or facts.
- (h) Both the parties will be required to submit their proposed exhibits along with duly filled Proforma 'E' for the scrutiny of those exhibits within the mandate of Order XIII CPC.
- (i) Both the parties will be required to discover the chance of settlement, and inform the court about the intended mode of settlement.

(CIVIL JUDGE) -----

PROFORMA 'C'

IN THE COURT OF CIVIL JUDGE
Civil Suit No. /2018

Plaintiff(S)
VS
Defendant(S)

(Notice for Trial Management and Scheduling Conference)

WHEREAS the above mentioned suit is pending disposal in this court. Take notice that the undersigned shall hold Trial Management and Scheduling Conference on *(Date)* at *(Time)*. The Conference shall be attended by either the parties in person, or through their counsel fully authorized on their behalf and acquainted with the nature and basis of their claims. The Conference shall be conducted on the following agenda items:

- (a) Both the parties will be required to inform the court that they have gone through each others' pleadings, and are aware of the nature and basis of each others' claims.
- (b) Both the parties will be required to present and exchange the list of witnesses, which they intend to produce in the court, either to give evidence or to produce documents, on the prescribed Proformas 'F1' & 'F2'.
- (c) Both the parties will be required to tender certificate of readiness, to produce their witnesses and documents in the court, through Proforma 'G'.
- (d) Both the parties will be required to give a schedule/time table, within which, they would be bound to present their evidence and cross examine each others witnesses.
- (e) Both the parties will be required to discover the chance of settlement, and inform the court about the intended mode of settlement.

(CIVIL JUDGE)

PROFORMA NO. 1

IN THE COURT OF CIVIL JUDGE -----

Civil Suit No. /2018

Plaintiff(S)

vs.

Defendant(S)

(Notice for Settlement Conference)

WHEREAS the above mentioned suit is pending disposal in this court. Take notice that the undersigned shall hold a Settlement Conference on *(Date)* at *(time)*. The Conference shall be attended by either the parties in person, or through their counsel fully authorized on their behalf and acquainted with the nature and basis of their claims. The Conference shall be conducted on the following agenda items:

- (a) Both the parties will be required to inform the court that they have gone through each others' pleadings, and are aware of the nature and basis of each others' claim.
- (b) Both the parties will be required to discover the chance of settlement, and inform the court about the intended mode of settlement.

(CIVIL JUDGE) -----

PROFORMA 'E'

IN THE COURT OF CIVIL JUDGE

Civil Suit No. /2018

Plaintiff(S) VS Defendant(S)

(LIST OF PROPOSED EXHIBITS SUBMITTED BY THE PARTIES AT THE FIRST HEARING OF THE SUIT UNDER ORDER XIII)

EXHIBIT LIST		
PLAINTIFF	DEFENDANTS	
SERIAL NO.	DESCRIPTION OF DOCUMENT(S)	EVIDENCE OF WHICH FACT(S)

Name(s) of the plaintiff(s)/defendant(s) and their counsel(s) _____ Signature(s) of the

Plaintiff(s)/Defendant(s) and their counsel(s), _____

PROFORMA 'F-1'

IN THE COURT OF CIVIL JUDGE -----

Civil Suit No. /2018

Plaintiff(S) vs Defendant(S)

(LIST OF WITNESSES AND DOCUMENTS TENDERED BY THE PARTIES
UNDER ORDER XVI CPC)

LIST OF WITNESSES AND DOCUMENTS				
PLAINTIFF		DEFENDANT		
SERIAL NO.	DESCRIPTION OF DOCUMENT(S)	CORRESPONDING WITNESS (S) NAME, ADDRESS, MOBILE NUMBER	EVIDENCE OF WHICH FACT (S)	DATE & NUMBER OF ENDORSEMENT BY THE COURT AS PROPOSED EXHIBITS

Name(s) of the plaintiff(s)/defendant(s) and their counsel(s) _____

Signature(s) of the Plaintiff(s)/Defendant(s) and their counsel(s)

PROFORMA 'F-2'

IN THE COURT OF CIVIL JUDGE -----

Civil Suit No. /2018

Plaintiff(S)

vs

Defendant(S)

(LIST OF WITNESSES AND DOCUMENTS REQUIRED TO BE TENDERED BY THE PARTIES UNDER ORDER XVI CPC THROUGH THE PROCESS OF THE COURT)

LIST OF WITNESSES AND DOCUMENTS				
PLAINTIFF		DEFENDANT		
Serial No.	DESCRIPTION OF DOCUMENT(S)	CORRESPONDING WITNESS (S) NAME. ADDRESS. MOBILE NUMBER	EVIDENCE OF WHICH FACT (S)	DATE & NUMBER OF ENDORSEMENT BY THE COURT

Name(s) of the plaintiff(s)/defendant(s) and their counsel(s) _____ Signature(s) of

the Plaintiff(s)/Defendant(s) and their counsel(s) _____

PROFORMA 'G'

IN THE COURT OF CIVIL JUDGE -----

Civil Suit No. /2018

Plaintiff(S) vs. Defendant(S)

(CERTIFICATE OF READINESS OF EVIDENCE UNDER
ORDER XVI RULE 1 CPC)

PLAINTIFF

DEFENDANT

It is certified by the Plaintiff(s)/Defendant(s) that:

- (a) The witnesses and documents which Plaintiff(s)/Defendant(s) aspires to produce as evidence in the court, are ready to be produced at the date and time given by the court.
- (b) There are no other witnesses and documents required to be produced in the court, other than those mentioned in Proformas 'E', 'F1' & 'F2'.

Name(s) of the plaintiff(s)/defendant(s) and their counsel(s) __ Signature(s) of the

Plaintiff(s)/Defendant(s) and their counsel(s)_____".