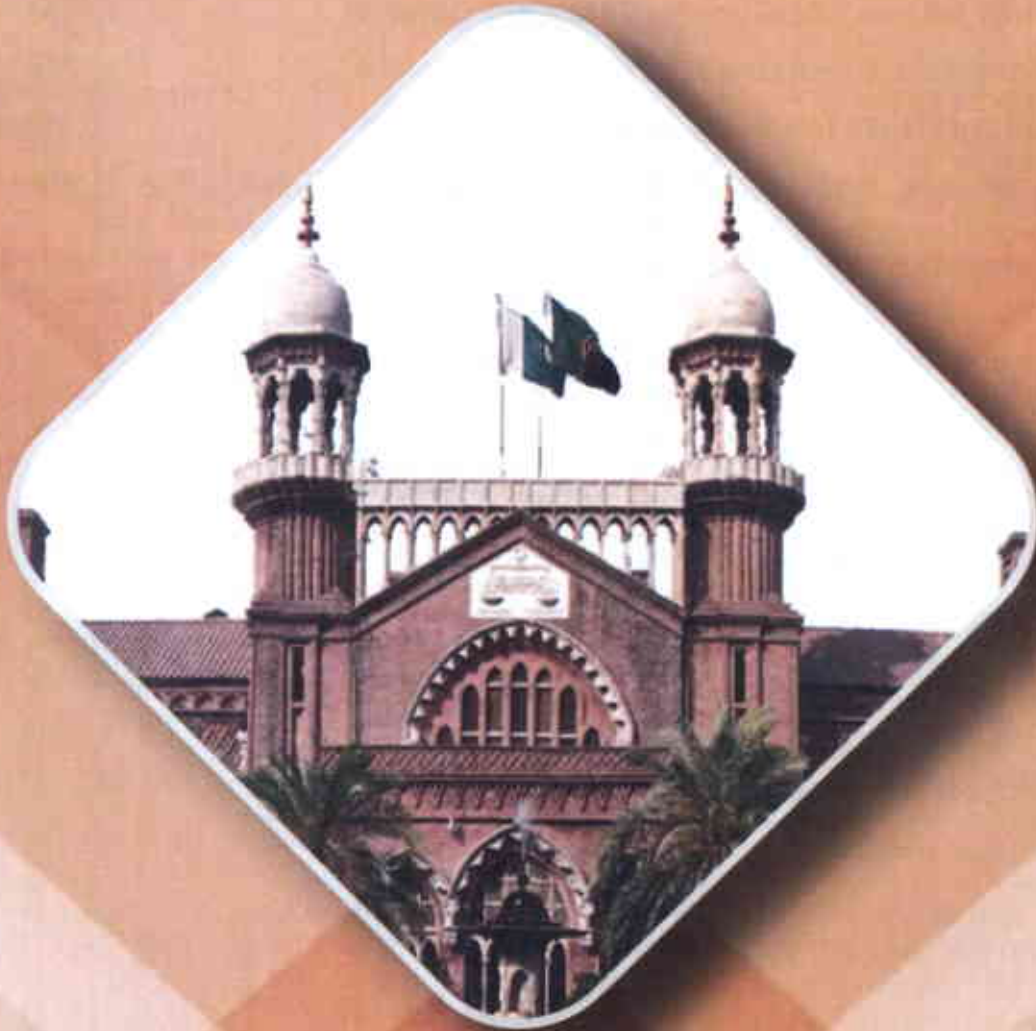




AMENDMENTS
IN THE FIRST SCHEDULE OF THE CODE OF
CIVIL PROCEDURE
1908



2018

LAHORE HIGH COURT, LAHORE

LAHORE HIGH COURT, LAHORE

MEMBERS OF RULE COMMITTEE (CPC):

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Lahore High Court, Lahore

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NOTIFICATION.

No. 237/Legis/XI-Y-26**Dated 15-08-2018**

The following amendments in Rules and Orders of the First Schedule to the Code of Civil Procedure, (Act of 1908), made under section 122 of the Code, by Lahore High Court, Lahore, after previous approval of the Govt. of the Punjab are hereby published in the official Gazette under section 127 of the Code.

2. These shall come into force, within the local limits of jurisdiction of Lahore High Court, Lahore on such dates and in such District or Districts of the Punjab as Lahore High Court, Lahore may determine by Notification.

AMENDMENTS

1. This Notification may be cited as the Civil Procedure Code (Amendment of First Schedule) 2018.

2. It shall come into force in such district or districts of the Punjab as Lahore High Court Lahore may, by notification, determine and different dates may be so determined for different districts.

"In the Code of Civil Procedure, 1908, in the First Schedule:

1. In Order I, for rule 11, the following shall be substituted:

"11. Conduct of suit.- The Court shall, at the time of framing of the issues, give the conduct of the suit to such party as it deems proper for expeditious adjudication of the suit."

2. In Order II, after rule 6, the following new rule 6-A shall be inserted:

"6-A. Consolidation of suits.- Where two or more suits or proceedings of the same nature requiring determination of similar issues between the same parties are pending in relation to the same subject matter, the Court may, if considers it expedient for avoiding multiplicity of litigation or conflict in judgments, direct the consolidation of

such suits or proceedings as one trial, whereupon all such suits or proceedings shall be decided on the basis of the consolidated trial.”.

3. For Order IV, the following shall be substituted:

1. Courts to be numbered.— For the purposes of this Code, the Courts shall be numbered, identified and addressed with reference to the numbers allocated to them.

2. Commencement of proceedings in suit.—

(1) Every suit shall be instituted, by presenting a plaint to a Court or such officer as it appoints in this behalf, and assigned to an Administrative Judge and a Trial Judge under the Code.

(2) Every plaint shall comply with the rules contained in Order VI and Order VII, so far as they are applicable.

3. Register of suits.— The Administrative Judge shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entry shall be numbered in every year according to the order in which the plaints are admitted.”

4. After Order IV, the following new Order IV-A shall be inserted.

**“ORDER IV-A
ADMINISTRATIVE JUDGES**

1. Administrative Judges.— The District Judge shall designate as many Civil Judges in the District as Administrative Judges as are necessary to the disposal of load of work with dispatch.

2. The Administrative Judge shall take and complete pre-trial proceedings in a suit, after it has been registered, when he is satisfied that the plaint and the written statement complies with the provisions of Orders VI and VII.

3. The pre-trial proceedings include the proceedings under Orders V, VIII, IX, IX-A, IX-B, X, XI, XII, XIII and XIV.

4. Upon taking and completing his pre-trial proceedings, the Administrative Judge shall cause the suit along with the entire record, placed on a specific date, before the Trial Judge for its trial under the Code:

Provided that the Administrative Judge, before sending the suit, shall satisfy himself that witnesses of the parties to the suit enter their appearance before the Trial Judge on the date when the suit is to be placed before him.

5. The Trial Judge, before commencement of trial, shall cause registration of the suit in the register of civil suits in the manner provided in Order IV."

5. In **Order V**:

(1) for rule 2, the following shall be substituted:

"2. Copy or statement annexed to the summons.- Every summons shall be accompanied by a copy of the plaint, or if so permitted by a concise statement, and copies of the documents annexed with the plaint and a copy of the list under sub-rule (2) of Rule 14 in Order VII.";

(2) In rule 5, the existing rule shall be numbered as sub-rule (1) and thereafter, the following new sub-rule (2) shall be inserted:

"(2) When the summons are for the settlement of issues, the summons shall state that the defendant may present written statement of his defence before the day fixed for his appearance".

(3) for rule 10-A, the following shall be substituted:

"10-A. Service by post.- (1) Simultaneously with the issue of summons under rule 9, there shall be sent, unless otherwise ordered by the Court, to the defendant, by registered post acknowledgement due and another copy of the summons signed and sealed in the manner provided in rule 10 by courier service, or as the court may determine, by urgent mail service of Pakistan Post, at the cost of the plaintiff.

(2) The acknowledgment, purported to be signed by the defendant, of the receipt of the registered communication or an endorsement by a courier messenger or postal employee that the defendant refused to take delivery of the summons shall be deemed by the Court issuing the summons to be *prima facie* proof of the service of the summons."

6. In **Order VII**:

(1) in rule 9, in sub-rule (1-A), for clause (a), the following shall be substituted:

"(a) copies of the plaint and documents under rule 14 for each defendant and two extra copies;"

(2) in rule 11, for clause (d), the following shall be substituted:

“(d) where the suit appears, from the record available with the court, to be barred by any law.”;

- (3) after rule 11, the following new rule 11-A shall be inserted:

“11-A. Separate application barred.- A plea for rejection of plaint under rule 11 may be raised by the defendant in his written statement and not by a separate application.”;

- (4) for rule 13, the following shall be substituted:

“13. Where rejection of plaint does not preclude presentation of fresh plaint.- The rejection of the plaint, on any of the grounds mentioned in clause (a), clause (b) or clause (c) of rule 11, shall not, of its own force, preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.”; and

- (5) after rule 21, the following new rule 21-A shall be inserted:

“21-A. Consequence of failure to annex copy etc. with the plaint.- When the plaintiff fails to annex a copy of the plaint or concise statement or copies of documents mentioned in rule 2, the Court may make such order as it thinks just and fit.”

- (6) in rule 26, after sub-rule (3), the following sub-rule (4), shall be inserted:

“(4) Failure of the plaintiff to file the list of legal representatives, as aforesaid, shall render the suit liable to be dismissed.”

7. In Order VIII:

- (1) after rule 1, the following new rule 1-A and rule 1-B shall be inserted:

“1-A. Presumption of admission of contents of plaint.- When the defendant fails to present written statement of his defence before the day fixed for his hearing, the Court shall presume that he admits the contents of the plaint as true:

Provided that nothing shall preclude the Court from permitting the defendant to present written statement, upon showing a just and sufficient cause in an application in writing supported by an affidavit:

Provided further that the permission to present written statement shall not extend beyond the period fixed in rule 1.

1-B. Additional copies of written statement and documents.- The defendant shall furnish additional copies of written statement and of the documents annexed therewith for their supply to the plaintiff."

- (2) in rule 13, after sub-rule (3), the following new sub-rule (4) and sub-rule (5) shall be inserted:

"(4) Failure of the defendant to file the list of legal representatives, as aforesaid, shall render his defence liable to be struck out."

(5) The Court may, on an application made by the defendant when accompanied with the list of legal representatives and disclosing a sufficient cause for non-filing of the list, recall the order passed under sub-rule (4) and allow him to continue with his defence of the suit."

- 8.** For **Order IX-A**, the following shall be substituted:

1. Fixation of intermediate date.- (1) After the close of the pleadings, the Court shall fix-

- (a) a day for examination of parties under Order X;
- (b) a day for discovery and inspection under Order XI; and
- (c) a day for its proceedings under Order XII.

(2) The Court may grant a maximum adjournment of three days for completion of each proceedings mentioned in sub-rule (1) and shall keep a full and complete record of these proceedings in Form 13 in Appendix C.

(3) It shall be the duty of the Court to take proceedings under Orders X, XI and XII and to satisfy itself that the parties go to trial for precise and exact issues of law and facts they are at variance with each other.

(4) While taking proceedings under Orders X, XI and XII, the Court, having regard to the facts and circumstances of the case, shall carefully determine the possibility of the alternate dispute resolution method and when so warranted adopt such a method in accordance with section 89-A.

(5) The Court shall stay the proceedings of the suit for a period which is not more than thirty days when it requires the parties to adopt any of the alternate dispute resolution method.

2. Case management questionnaire.— (1) The plaintiff shall file along with the plaint a duly filled in case management questionnaire in Form 14 in Appendix C.

(2) The defendant shall, at the time of presenting his written statement, file a duly filled in case management questionnaire in Form 15 in Appendix C."

9. After **Order IX-A**, the following new Order IX-B shall be inserted:

"ORDER IX-B

ALTERNATE DISPUTE RESOLUTION

1. Reference to mediation.— (1) Except where the Court is satisfied that there is no possibility of mediation or an intricate question of law or facts is involved, the Court shall refer the case for mediation.

(2) While referring the matter for mediation, the Court may indicate the material issues for determination through mediation.

2. Appearance of parties.— Where a case is referred for mediation, the Court shall stay the proceedings for a period not exceeding thirty days and direct the parties to appear before the Mediation Centre, set up by Lahore High Court, on such date and time as the Court may specify.

3. Settlement.— (1) Where the mediation proceedings are successful and the parties have arrived at an agreement, the Mediator shall cause the same to be recorded in writing, signed by the parties or their recognized agents or their pleaders and attested by two independent witnesses.

(2) The agreement shall be certified by the Mediator and transmitted forthwith, through the Administrator of the Mediation Center, to the Court.

(3) The Court shall, on receipt of the agreement, pass a decree in terms thereof unless the Court, for reasons to be recorded in writing, finds that the agreement between the parties is not enforceable at law.

(4) Where the settlement relates only to a part of the dispute, the Court shall pass decree or an order in terms of such settlement and proceed to adjudicate the remaining issues.

4. Failure of mediation.— Where the meditation fails and no settlement is made between the parties, the Mediator shall submit a report to the Court and the Court shall proceed with the case from the stage it was referred to Mediation."

10. In **Order XI**:

(1) for the existing rules 1 and 2, the following shall be substituted:

"1. Discoveries by interrogatories.- The Court shall direct the parties to deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties stating clearly which of such interrogatories each of such person is required to answer, provided that the Court may reject an interrogatory or part thereof which, in its opinion, is not relevant to the case.

2. Communication of interrogatories.- On receipt of the interrogatories under rule 1, the Court shall deliver the interrogatories to the concerned person for submitting the answer within such time as the Court may specify.

- (2) for rule 8, the following shall be substituted:

"8. Affidavit.- The interrogatories shall be answered by an affidavit to be filed within the time specified by the Court.";

- (3) for rule 11, the following shall be substituted:

"11. Order to answer or answer further.- Where any person interrogated submits an insufficient or an evasive answer, the Court may require him to submit the proper answer within the time specified by the Court.";

- (4) for rule 12, the following shall be substituted:

"12. Application for discovery of documents.- (1) Any party may apply to the Court for an order directing any other party to a suit to make discovery on oath of the documents which are or have been in his possession or power, relating to a matter in issue in the suit.

(2) On hearing such application, the Court may either refuse or adjourn the same, if it is satisfied that such discovery is not necessary or not necessary at that stage of the suit, or may, after being satisfied as to the validity of the prayer made, direct the other party to make the discovery:

Provided that the discovery shall not be ordered when and so far as the Court is of opinion that it is not necessary either for disposing the suit or for saving costs".

11. In Order XII:

- (1) for rule 1, the following shall be substituted:

"1. Admission of case.- The Court shall enquire from a party whether or not it admits the

truth of the whole or part of the case set up by the other party in the pleadings.”;

- (2) for rule 2, the following shall be substituted:

“2. Admission of documents.- (1) The Court shall also require the parties to admit or deny the documents annexed with the plaint or, as the case may be, the written statement.

(2) If a party fails to comply with the direction under sub-rule (2), the Court may proceed against such party under rule 21 of Order XI.

(3) If a party denies a document which is proved at the trial, the Court shall burden such party with such heavy costs as it may deem fit.”.

- 12. In Order XIV,** in rule 1, for sub-rule (5), the following shall be substituted:

“(5) At the first hearing of the suit after the proceedings under Orders X, XI and XII, the Court shall, after reading the plaint, the written statement and such examination of the parties as may be necessary, determine the material propositions of facts or of law in dispute between the parties and shall proceed to frame and record the issues on which the decision is likely to depend.”.

- 13. In Order XVI,** in rule 1:

- (1) for sub-rule (1), the following shall be substituted:

“(1) The Court shall, immediately after framing of the issues, require the parties to file a list of witnesses in the Court within such period, not later than seven days, as the Court may fix.”; and

- (2) for sub-rule (2), the following shall be substituted:

“(2) A party shall not be permitted to call witnesses other than those contained in the list, except with the permission of the Court and after showing good cause for the omission of the said witnesses from the list and the Court shall record reasons for granting permission.”.

- 14. In Order XX:**

- (1) for rule 1, the following shall be substituted:

“1. Judgment when pronounced.- (1) On completion of evidence, the Court shall fix a date, not exceeding fifteen days, for submission of the precise written arguments along with the relevant case-law by the parties.

(2) The Court, after submission of the written arguments under sub-rule (1) and after hearing the oral submissions, if so required, pronounce judgment in open court either at once or on some future date, not exceeding fifteen days, for which due notice shall be given to the parties or their advocates.”; and

(2) for rule 20, the following shall be substituted:

“20. Certified copies of judgment and decree.- The Court shall, at the time of pronouncement of the judgment, provide to the parties, at their expense, certified copies of the judgment and the decree.”.

15. In Order XXI:

(1) for rule 10, the following shall be substituted:

“10. Execution of a decree.- On passing of an executable decree by a Court, the suit shall stand converted into execution proceedings and no separate application for the purpose and no fresh notice to the judgment debtor shall be necessary.”;

(2) for rule 11, the following shall be substituted:

“11. Attachment.- At the time of the initiation of execution proceedings, the Court shall order the attachment of the property of the judgment debtor, if it has not already been attached under Order XXXVIII.”;

(3) rule 17 shall be omitted;

(4) rule 23 shall be omitted;

(5) for rule 23-A, the following shall be substituted:

“23-A. Deposit of decretal amount, etc.- An objection by the judgment-debtor to the execution of a decree shall not be considered by the Court unless:

(a) in case of a decree for the payment of money, he either deposits the decretal amount in the Court or furnishes security to the satisfaction of the Court for its payment; and

(b) in case of any other decree, he furnishes security to the satisfaction of the Court for the due performance of the decree.”;

(6) rule 29 shall be omitted;

(7) in rule 32, in sub-rule (1), the expression “or for restitution of conjugal rights,” and the expression “in the

case of a decree for restitution of conjugal rights by the attachment of his property or," shall be omitted;

- (8) rule 33 shall be omitted;
- (9) in rule 36, for the full stop at the end, a colon shall be substituted and thereafter, the following proviso shall be added:

"Provided that no such right of a tenant or other person shall be protected in a case where the tenant or the other person entered into possession of the immovable property during the pendency of the suit wherein the decree has been passed.";

- (10) for rule 37, the following shall be substituted:

"37. Discretionary power to allow judgment-debtor an opportunity to show good cause against detention in prison.- (1) Notwithstanding anything in the rules, where a decree for the payment of money is sought to be executed through arrest and detention in prison of the judgment-debtor, the Court may, before issuing a warrant of arrest, provide one opportunity to the judgment-debtor to show good cause as to why he should not be detained in prison:

Provided that such opportunity shall not be necessary if the Court is satisfied, by affidavit or otherwise, that, with the object of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.

(2) Where the judgment-debtor fails to avail himself the opportunity or is unable to show a good cause, the Court shall, if the decree holder so requires, issue a warrant for the arrest of the judgment-debtor.";

- (11) in rule 40:
- (a) for sub-rule (1), the following shall be substituted:

"(1) Where a judgment-debtor avails himself the opportunity provided under rule 37 or is brought before the Court after being arrested in execution of the decree for the payment of money, the Court shall give the judgment-debtor an opportunity of showing good cause why he should not be detained in prison.";

(b) sub-rule (2) shall be omitted;

(c) for sub-rule (3), the following shall be substituted:

"(3) Where the judgment-debtor fails to show any good cause under sub-rule (1),

the Court may, subject to the provisions of section 51 and to the other provisions of the Code, make an order for the detention of the judgment-debtor in prison and shall, in that event, cause him to be arrested if he is not already under arrest."

(12) for rule 54, the following shall be substituted:

"54. Attachment of immovable property.- (1)

Where the property is immovable property, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all other persons from taking any benefit from such transfer or charge and any such transfer, charge, alienation, encumbrance or other disposition in violation of this rule shall be void and of no legal effect.

(2) A copy of the order under sub-rule (1) shall be conveyed to the concerned authority maintaining the record of the property under attachment, in addition to a proclamation of the order at some place adjacent to such property by beat of drum or any other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and the Court-house, and also, where the property is subject to land revenue to the Government, in the office of the Collector of the district in which the land is situate."

(13) in rule 58, in sub-rule (1), in the proviso, for the words "one year", the words "thirty days" shall be substituted:

(14) in rule 66:

(1) for sub-rule (2), the following shall be substituted:

"(2) (i) such proclamation shall be drawn up by the Court Auctioneer and shall state the time and place of sale and specify as fairly and accurately as possible:

(a) the property to be sold;

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(c) any encumbrance to which the property is liable;

- (d) the amount for the recovery of which the sale is ordered; and
 - (e) every other thing which the Court Auctioneer considers material for a purchaser to know in order to judge of the nature and value of the property.
- (ii) the Court Auctioneer shall submit the proclamation drawn up by him to the Court for its approval which shall add to it the reserve price of the property under sale, based upon the evaluation report submitted by any evaluator appointed by the Court from amongst the evaluators approved by the Pakistan Banker's Association."
- (2) sub-rule (3) shall be omitted.
- (15) in rule 67, for sub-rule (2), the following shall be substituted:
- "(2) (i) Where the reserve price determined by the Court exceeds rupees two million, the proclamation shall also be published in at least one widely circulated national daily newspaper and the costs of such publication shall be deemed to be costs of the sale; and
- (ii) The Court Auctioneer shall cause video recording of the auction proceedings while ensuring transparent and fair bidding process of the public auction and the costs of such video recording shall be deemed to be costs of the sale."
- (16) rule 70 shall be omitted;
- (17) in rule 72:
- (a) for sub-rule (1) and sub-rule (2), the following shall be substituted:
- "(1) The holder of a decree in execution of which the property is sold may participate in the auction of the property and for that purpose make a bid for the purchase of the property.
- (2) Where a decree-holder purchases the property, the purchase-money and the amount due on the decree

may, subject to the provisions of section 73, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.”;

(b) sub-rule (3) shall be omitted;

(18) rule 78 shall be omitted;

(19) in rule 83, after sub-rule (3), the following new sub-rule (4) shall be inserted:

“(4) A notice of the sale of the property shall be given to the judgment-debtor with an option to match the highest bid within fifteen days of the auction of the property and the judgment debtor, in that case, shall have the first right of refusal to purchase the property at the highest bid offered by a bidder.”;

(20) in rule 84, for sub-rule (1), the following shall be substituted:

“(1) On every sale of immovable property, the person declared to be the purchaser shall pay to the officer or other person conducting the sale the amount equal to the reserve price of the property through pay order or bank draft or banker’s cheque immediately after such declaration and in case such payment is not so made, the property shall forthwith be resold in the manner provided under this Order.”;

(21) in rule 89:

(a) for the full stop at the end, a colon shall be substituted and thereafter the following proviso shall be inserted:

“Provided that no application under this rule shall be entertained unless the applicant deposits in the Court the amount specified in the proclamation of sale along with a sum equal to five per cent of the purchase money.”; and

(b) after sub-rule (3), the following new sub-rule (4) shall be inserted:

“(4) The Court shall decide the application under this rule within thirty days of the filing of the application.”; and

(22) in rule 90, in the second proviso, for the words “twenty five”, the word “fifty” shall be substituted.

16. In Order XXIII, in rule 1, in sub-rule (2), after the words “the Court is satisfied”, the words “after recording reasons” shall be inserted.

17. In **Order XXXII**, for rule 2, the following shall be substituted:

"2. Where suit is instituted without next friend.- (1) Where a suit is instituted by or on behalf of a minor without a next friend, the Court may on such fact coming to its notice allow an opportunity to remedy the defect.

(2) Where the defect is not removed, the Court may, on an application of the defendant, or of its own motion, order that the plaint should be taken off the file with costs to be paid by the pleader or other person by whom it was presented.

(3) Notice of the application submitted under sub-rule (2) shall be given to the pleader or such other person, and the Court may, after hearing his objections, if any, make appropriate order."

18. **Order XXXIII** shall be omitted.

19. In **Order XXXVIII**, for the existing rule 1, rule 2 and rule 3, the following shall be substituted:

"1. Defendant to be called upon to furnish security.- (1) The Court, on the first date of hearing, after examination of the plaint and on being satisfied as to the existence of a *prima facie* case, direct the defendant to furnish adequate security for the due satisfaction of the decree, if passed against him.

(2) Where the defendant fails to furnish security within the time fixed by the Court, the Court may, after considering the available record and for reasons to be recorded, prohibit the defendant from transferring or charging his property in any way, except with the prior permission of the Court.

2. Procedure on application.- (1) Where an order under rule 1 is made, the defendant may apply, along with an affidavit, to the Court for permission to transfer or charge his property.

(2) On receipt of such application, the Court, if satisfied, that the intended disposal by the defendant is not likely to affect the due satisfaction of the decree, may proceed to grant such permission.

3. Furnishing of security.- The defendant may apply to the Court for the vacation of the order issued under rule 1, by furnishing independent security to the satisfaction of the Court for the due satisfaction of the decree, if passed against him."

20. In **Order XXXIX**, rule 2B shall be omitted.

21. In **Order XLI**:

(1) rule 23-A shall be omitted;

- (2) for rule 27, the following shall be substituted:

"27. Production of additional evidence in Appellate Court.- The Appellate Court, after recording reasons, allow the parties to an appeal to produce additional evidence, whether oral or documentary:

- (a) if the Court from whose decree the appeal has been preferred, has refused to admit evidence which ought to have been admitted;
- (b) the Appellate Court, on being satisfied that the additional evidence has been available but could not be produced before the trial Court for reasons beyond the control of the party seeking its production; or
- (c) the Appellate Court itself requires any such evidence so as to enable it to pronounce a judgment."

22. In Order XLIII:

- (1) in rule 1:

- (i) clauses (a), (c), (e), (f), (g), (h), (i), (k), (l), (m), (n), (o) and (v) shall be omitted;
- (ii) in clause (j), the expression "rule 72 or" shall be deleted;
- (iii) in clause (w), for the full stop at the end, a colon shall be substituted and thereafter the following proviso shall be inserted:

"Provided that the appellant, while filing an appeal under this Order shall along with the memorandum of appeal, furnish copies of the pleadings, order sheet of the subordinate Court and all necessary documents.";

- (2) for rule 2, the following shall be substituted:

"2. Record of the trial Court.- It shall not be necessary for the Appellate Court to call for the record of the trial Court, unless it, for reasons to be recorded, requires the record for decision of the appeal."; and

- (3) rule 3 and rule 4 shall be omitted.

23. Order XLIV shall be omitted.

By order of the Chief Justice and Judges

**(Rao Abdul Jabbar Khan)
Registrar**



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