

CHAPTER IV

PRESENTATION OF APPEALS AND APPLICATIONS

1. Institution of proceedings. — All matters which are to be instituted on the Appellate Side of the High Court shall be presented in the office of the Registrar to such person as the Registrar may, by special or general orders, authorise. The person to whom such matters are presented shall, if he accepts the same, endorse thereon under his initials the date of filing. No matter, which has not been first filed in the office, shall be brought before or presented to the Court including the Court of the Registrar.

2. Presentation of proceedings by a party in person. — The presentation of any matter or proceeding by any person not represented by an Advocate shall be made by such person personally.

¹[**2A.** Public interest litigation matters be placed before the Division Bench, after obtaining orders from the Honourable the Chief Justice at Bombay and from the Senior-most Judge available at the concerned Benches.]

1. Added vide Mah. Govt. Gazette, Dt. 26-9-1996, Pt. 4-C, pg. 432.

3. Language of proceedings presented by party in person. — The memoranda of appeals, cross-objections, applications or petitions presented by the party personally may be either in Marathi or Hindi or in English :

²[Provided that the party or the Advocate shall be required to put at his expense official translations of the same in English whenever a specific order in that respect is passed.]

2. Substituted by Notification No. P. 3603/1986, Dt. 6-8-1986.

4. Presentation of proceedings of parties represented by Advocates. — The presentation of any matters or proceedings on behalf of a party by an Advocate shall be made by such Advocate personally or by his recognized clerk.

5. Language and other requirements of proceedings presented by Advocates. — The memoranda of appeals, cross-objections, applications or petitions presented by Advocates shall be in English, and shall be signed by the Advocate concerned or by any other Advocate on his behalf provided that the Advocate concerned ratifies the same by affixing to it his signature within one week of the date of its being filed in Court.

6. Advocates appearance prior to filing of Vakalatnama. — When an Advocate instructed by a party to act or appear in a matter has not been able to secure a Vakalatnama in the prescribed form duly signed by the client, he may file a statement signed by him slating that he has instructions from or on behalf of his client to act or appear in the matter and also undertaking to file within a week a Vakalatnama in the prescribed form, duly signed by the party.

7. (i) Ratification of acceptance of Vakalatnama by the Advocate concerned when endorsement of acceptance is made by another. — Where an endorsement of acceptance on the Vakalatnama has been made by any other Advocate on behalf of the Advocate concerned, the latter shall ratify the acceptance of the Vakalatnama within one week of its being Filed by putting his own signature to it.

(ii) Subsequent change in Advocate's address to be notified to office. — Any change in the Advocate's address subsequent to the filing of the matter or the proceedings during the pendency of the same shall immediately be notified to the office by the Advocate.

8. Consent of Advocate on record necessary before another Advocate Files appearance. — An advocate shall not be permitted to file appearance in any matter or proceeding if there is already an Advocate on record, unless he produces a written consent of the Advocate on record:

Where such consent is not necessary. — Provided that no such consent shall be necessary where the Advocate on record has been suspended or removed from practice, or has ceased to practice, or has been rendered incapable of practising on account of physical or mental incapacity or any other cause; and

Court may dispense with such consent. — Provided further that the Court may in any appropriate case dispense with such consent, if it deems fit to do so.

9. Office to raise objection of limitation where necessary copies are not filed within limitation. — The office shall note in particular whether a certified copy of the ^{2A} judgement or order which is required to be filed along with the appeal or the application for a valid presentation thereof is filed within the period of limitation prescribed for the appeal or the application. If it is found that such copy is not filed within the prescribed period of limitation, the office shall treat that the matter as filed beyond the period of limitation.

2A. Substituted by Notification No. P. 3601/2007, Dt. 18-8-2007.

[Note. — (i) Attention is invited to sub-section (2) of section 12 of the Limitation Act, 1963, which provides that in computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence, or order appealed from or sought to be revised or reviewed shall be excluded.

Attention is also invited to Rule 20 of Order XX of the Code of Civil Procedure, 1908, as amended by the High Court) end Rule I (amended) of Chapter XIII of the Bombay High Court Appellate Side Rules, 1960, which permit a party to apply for certified copies by post.

Where a party applies for a certified copy by post other than registered post, the date of its receipt by the office of the Court would be the date of the presentation of the application. Whenever such application is made by registered post, the same shall be prepaid for acknowledgment and the date of posting of the letter would be the date of presentation of the application to the Court.

(ii) Attention is also invited to the Explanation added at the bottom of section 12 of the Limitation Act, 1963, which provides that in computing the time requisite for obtaining the copy of a decree or order any time taken by the Court to prepare the decree or order before an application for copy thereof is made shall not be excluded.]

10. (i) Statement showing matter is within limitation to accompany matter. — Every matter presented to the Court shall be accompanied by a statement showing how the same is within the period of limitation prescribed for it.

(ii) Matters beyond limitation to be accompanied by application for condonation of delay. — If it is beyond the prescribed period of limitation it shall be accompanied by an application for condonation of the delay stating the circumstances

under which the delay has occurred and the grounds for excusing the same.

(iii) Office not to accept matters not in conformity with the rule, - Any matter not complying with the requirements of this rule shall be not accepted by the office.

11. (i) Registrar to be moved within seven days by a note against refusal to accept on the ground of limitation. — The Advocate or the party aggrieved by the refusal of the office to accept the matter under the foregoing rule may, within a period of seven days from such refusal, require by a note that the matter be placed before the Registrar for orders regarding the question of limitation. When such note is presented the matter shall, forthwith be placed before the Registrar for orders, If the matter is not placed before the Registrar within three days from the filing of the note, the party of the Advocate shall move the Registrar for orders on the note.

(ii) Court to be moved within seven days by a note against Registrar's order. — If the Registrar upholds the contention of the office, and if the Advocate or the party is dissatisfied with the order of the Registrar, he shall file a note within seven days from the date of the order of the Registrar for placing the matter before the Court for revision of the Registrar's orders, and the office shall forthwith place the matter before the Court. If the office fails to place the matter before the Court within three days from the filing of the note, the party or the Advocate shall move the Court for orders on the note.

12. (i) Accompaniments to memorandum of appeal. — Every memorandum of appeal shall be accompanied by a certified copy of the judgment ^{2B} or order under appeal, together with one typed copy of the judgment or order in the case of a single Judge matter and two typed copies of the judgment or order in the case of a Division Bench matter.

[2B. Delettee & Added Notification No. P. 3601/2007, Dt. 18-8-2007.](#)

The Office may, however, accept the memorandum of appeal without such typed copy or copies, as the case may be, provided the Advocate for the appellant gives an undertaking to file the same if the appeal is required to be placed before the Court for orders before the prints are received.

(ii) Accompaniments to memorandum of appeal in appeals from appellate decrees. — In the case of appeals from appellate decrees, the memorandum of appeal shall also be

accompanied by the certified copies of judgment ^{2B} or order of the trial Court and of the grounds of appeal and cross-objections, if any, in the lower appellate Court, together with one typed copy of each of the same.

2B. Deleted & Added Notification No. P. 3601/2007, Dt. 18-8-2007.

The Office may, however, accept the memorandum of appeal without such typed copy, provided the Advocate for the appellant gives an undertaking to File the same if the appeal is required to be placed before the Court for orders before the prints are received.

(iii) Where, however, any of the accompaniments mentioned in sub-rules (i) and (ii) are not in English, typed copies of translations in English of such accompaniments shall be annexed.

³[Provided that such translations would not be necessary if the documents are in Marathi and if the party or the Advocate undertakes that English translations would be supplied whenever an order in that respect is made by the Court in a particular proceeding.]

3. Added by Notification No. P 3603/1986, Dt. 6-8-1986.

⁴[**12A.** The appeal memo under the Motor Vehicles Act, 1988, filed under section 173 of the said Act, shall be accompanied by a certificate by the Registrar of the High Court that a sum of Rs.25,000 (Rupees Twenty Five Thousand only) or 50 per cent whichever is less of the amount awarded by the award appealed from has been deposited by the appellant in the High Court. The appeal which is not accompanied by such a certificate shall be placed before the Registrar for orders.]

4. Added by Notification No. P.3604/1990, Dt. 18-12-1990.

13. Deleted.

14. Accompaniments in appeals from orders. — Appeals from orders under section 104 and Order XLIII, Rule I of the Code of Civil Procedure shall, in addition to the accompaniment prescribed in rule

12 above, be accompanied by copies of all other relevant documents referred to in the order and also those on which the appellant wishes to rely.

15. Additional copies to be filed in appeals. — When presenting any appeal, an additional typed copy of the memorandum of appeal, and in appeals which are required to be placed before Division Bench, a set of typed copies of the judgments of the lower Courts pagged in accordance with the certified copies shall be supplied.

16. Value of claim to be shown in the memorandum, at the time of filing. — The value of the claim in appeal or in cross-objection shall be shown in the memorandum of appeal or of cross-objections at the time of the presentation of such memorandum and it shall, where necessary, be stated by way of a foot-note how the valuation has been arrived at.

17. Full court-fee to be paid or deposited at the time of presentation of the matter. — The full court-fee payable on the appeal, cross-objection, application or petition shall be paid at the time of presenting the same and if for any reason the required court-fee stamp is not available, the amount of the court-fee shall be deposited in Court before presenting the matter for acceptance, and a receipt of the amount so deposited shall be annexed to the memorandum of appeal, cross-objection, application or petition.

An appeal, cross-objection, application or petition in which full court- fee is not paid shall be accompanied by an application praying for time to pay the deficit court-fee and such appeal, cross-objection, application or petition shall be accepted by the office only in accordance with the orders of the Registrar on such application for time.

18. Difference in Court-fee paid in this Court and in lower Court to be explained by foot-note at the time of presentation of matter. — When the court-fee paid on or the valuation stated in the memorandum of appeal differs from that paid or stated in the lower Court, the difference shall be fully accounted for in a foot-note to the memorandum or appeal at the time of the presentation of such memorandum and the party or the Advocate shall also at the same time furnish all information and material necessary to explain the difference.

19. (i) Accompaniments in Civil Revision Applications. — Every application for the exercise of revisional jurisdiction of the High court shall be accompanied by a certified copy of judgment ^{2B} or order complained of.

2B. Deleted & Added Notification No. P. 3601/2007, Dt. 18-8-2007.

(ii) Accompaniments in case of appellate decrees or orders sought to be revised. — If the order sought to be revised is an appellate decree or order, it shall be accompanied by certified copies judgment ^{2B} or order of the trial Court and the memorandum of appeal and of cross-objections, if any, filed in the lower appellate Court.

2B. Deleted & Added Notification No. P. 3601/2007, Dt. 18-8-2007.

(iii) Where accompaniments are lacking, the application to be accompanied by affidavit. — Where any of the accompaniments mentioned in sub-rules (i) and (ii) are lacking, the application shall be accompanied by an affidavit of the party settling out fully the efforts he had made to secure the copy or copies and how he has not been able to secure the required copy or copies in spite of his best endeavours.

(iii-A) English Translation of accompaniment. — Where, however, any of the accompaniments mentioned in sub-rule (i) and (ii) are not in English, typed copies of translations in English of such accompaniments shall be annexed:

⁵[Provided that such translations would not be necessary if the documents are in Marathi and if the party or the Advocate undertakes that English translations would be supplied whenever an order in that respect is made by the Court in a particular proceeding.]

5. Added by Notification No. P. 3603/1983, Dt. 6-8-1986.

(iv) Office not to accept matters not in conformity with the rule. — Any matter not complying with the requirements of this rule shall not be accepted by the office

20. Accompaniments in Revision Application against interlocutory orders. — Revision Applications against interlocutory orders shall in addition to the accompaniments prescribed in the foregoing rule, be accompanied by copies of all other relevant documents referred to in the order and also those on which the applicant wishes to rely.

⁶[**20-A.** Wherever filing of certified copy of the impugned judgment or order ^{2B}is essential for valid presentation of any appeal, revision or application, according to the Rules, notwithstanding such requirement, filing of copies, certified as true by the Advocate presenting the memorandum of appeal, revision or application shall be taken as substantial compliance, if the matter is very urgent.]

6. Added by Notification No. P. 4501/1988, Dt. 27-11-1990.

2B. Added & Delete Notification No. P. 3601/2007, Dt. 18-8-2007.

21. Facts not set out in decree, order or judgment sought to be revised to be supported by an affidavit. — Every fact stated in any application for the exercise of the revisional jurisdiction not set out in the decree or order or judgment sought to be revised shall be supported by an affidavit.

22. (i) Limitation for Revision under Letters Patent, etc. — Applications for the exercise of the revisional jurisdiction of the High Court under Letters Patent or under any special or local law for which no period of limitation is prescribed by any such special or local law shall be presented within 90 days of the date of the decree or order sought to be revised. The time required for obtaining certified copies of the judgment or decree or order sought to be revised shall be excluded in computing the said period of 90 days.

(ii) Court may condone delay for sufficient cause. — The Court may for sufficient cause excuse delay in the presentation of an application referred to in sub-rule (i) above.

23. (i) Accompaniments to application for review. — Every application for review shall be accompanied by a typed copy of the judgment and ^{2B}[~~decree or~~] order sought to be reviewed and in cases where a review is required to be heard by a Division Bench, by two sets of such copies.

2B. Delete Notification No. P. 3601/2007, Dt. 18-8-2007.

(ii) Accompaniments where review proceeds on discovery of fresh evidence. — When an application for review proceeds on the ground of discovery of fresh matter or evidence, the documents if any, relied upon shall be annexed to the application with a list in Form No. 5, Appendix H, Schedule I of the Code of Civil

Procedure, together with an affidavit setting forth the circumstances under which such discovery has been made.

⁷**[(iii) Certificate of Advocate for ground of review.** — Every application for review shall) if filed by an Advocate, bear a Certificate under his hand to the following effect :—

7. Inserted by Notification No. P.3601/1992, Dt. 2-12-1992 and the previous sub-rule (iii) is renumbered as (iv).

CERTIFICATE

I, Advocate for the above named Review Petitioner herein, do hereby certify that, in my judgment, ground (or if there be several, such of the grounds) of review in the Petition presented by me on behalf of the said is a good ground of review,

Dated this day of..... 19.

(Signature)

Advocate for.....

(iv) Where fresh Vakalatnama is not necessary. — It shall not be necessary for an Advocate who had filed a vakalatnama at the original hearing to produce a fresh vakalatnama in order to entitle him to apply for or to appear in the review. However a statement to that effect shall be filed by the Advocate.]

24. (i) When Civil Applications should be supported by affidavits, — All Civil Applications excepting those mentioned below shall be supported by affidavits :—

(a) Application for fresh service of notice at the same address which is within time.

(b) Application for leave to appeal to the Supreme Court.

(c) Application for leave to appeal under Clause 15 of the Letters Patent.

(d) Application for review where the only ground for review is a mistake or error apparent on the face of the record.

(ii) Special provision in regard to Civil Revision Applications. — Notwithstanding anything contained in this rule, an application for the exercise of the revisional jurisdiction of the High Court need not be supported by an affidavit except to the extent provided in rule 21 of this Chapter.

(iii) Registrar's power to dispense with affidavits, — The Registrar may by a general or special order dispense with affidavits in particular cases or particular classes of cases.

(iv) Where affidavit is not filed in time the matter to be immediately placed before Registrar for orders. — Where a party or an Advocate fails to remove office objections relating to the filing of the affidavit within the time allowed in that behalf, the matter shall be placed for orders before the Registrar immediately after the expiry of the said period. The Registrar may either dispense with the filing of the affidavit or pass such other order or orders as he may deem necessary.

25. Registrar's powers to dispense with copies already on record of High Court and in execution appeals. — "Notwithstanding anything contained in the foregoing rules of this Chapter the Registrar may upon request by a party or an Advocate made at the time of presenting the memorandum of appeal, cross-objection, application or petition dispense with the filing of certified copies of judgments, orders or decrees which are required to be filed under these rules, when such copies or the originals thereof are already on the record, of the High Court. The Registrar may similarly dispense with certified copies of decrees under execution in execution appeals, if the party or the Advocate gives in writing that the same will not be necessary for the purposes of the appeal.

26. How memoranda of appeals, copies etc. should be typed. — All memoranda of appeals, cross-objections, applications, petitions, affidavits and all copies supplied by the Advocates or parties shall be neatly typed with double space the foolscap size in metric measures) leaving a margin of 2 inches or 5 centimetres. Sufficient blank space shall be left at the top for affixing court-fee stamps. No court-fee stamps shall be affixed in the margin. The copies supplied for the use of the Court and for service on the opposite parties shall accord with the original and shall be clearly legible. All notes filed shall be at least on half foolscap size paper.

27. Powers of the office to reject papers not properly typed or not in conformity with rules. — The office may refuse to accept any such papers which are not typed as prescribed or which do not conform to the requirement of rule 26 above.

28. Party in person to supply address and postage, if desiring information regarding his matter by post. — At the time of presentation, the party in person shall supply a memorandum of his address to which communications regarding the matter presented by him should be addressed by the office and sufficient postal stamps for the postage and registration charges.

⁸**[29. Advocates not ordinarily practising in High Court to leave written instructions and supply necessary postage, if desiring information regarding their matters by post.** — Advocates who do not reside or have their Office within the limits of Greater Bombay/Nagpur City/Aurangabad City or Panaji should have, in respect of their appearances in the High Court or its Benches at Nagpur, Aurangabad or Panaji as the case be, a recognised clerk attached to the High Court or its benches at Nagpur, Aurangabad or Panaji duly registered as such with the Office of the Registrar or Additional Registrar ⁹[or the Special Officer] as the case be. Service on such clerk, shall be deemed to be service on the Advocate.]

8. Substituted by Notification No. P. 3602/1988, Dt. 6-10-1988.

9. Previously Amended by Notification No. P. 3602/1988, Dt. 30-7-1990. Now deleted vide Mah. Govt. Gazette, Dt. 26-9-1996, Pt- 4-C, Pg. 431.

30. 'Advocate' to include 'attorney' unless otherwise required. — The expression 'Advocate' wherever it appears in the Bombay High Court Appellate Side Rules, 1960 shall include an attorney authorised to appear in Court, unless the context otherwise requires.

¹⁰**[30A.** In matters wherever copies or typed copies are required to be filed under any of the High Court Appellate Side Rules, 1960 (Reprint 1981) Xerox copies may be filed provided the same are legible and unmarked.]

10. Added by Notification No. P. 3604/1985, Dt. 6-10-1990.

31. Registrar's power to accept a matter not complying with the Rules and to grant time for such compliance. —

Notwithstanding rules 6, 10, 12, 17, 19 and 27 in this Chapter, the Registrar may, if he deems fit, on application of a party or his Advocate, direct the office to accept a matter not complying with the above rules and grant time to the party or his Advocate not exceeding 14 days for such compliance.

32. Caveat Rules.

(Order XL-A of Civil Procedure Code)

1. Every Caveat under section 148-A shall be signed by the Caveator or his Advocate and shall be in the form prescribed.

2. Every Caveat shall be presented by the party in person or by his Advocate to the Court or to the Officer authorised to receive the Caveat. Where the Caveator is represented by an Advocate his Vakalatnama shall accompany the Caveat. When an Advocate instructed by a party to act or appear in a matter has not been able to secure a Vakalatnama in the prescribed form duly signed by the client, he may file a written statement signed by him stating that he has instructions from or on behalf of his client to act or appear in the matter and also undertaking to file within a week a Vakalatnama in the prescribed form duly signed by the party.

3. The Caveat presented under Rule 2 shall be registered in a Caveat Register in Form given below. Before an application for any relief is made to the Court in any proceedings, it shall bear an endorsement from the office of the Court whether a Caveat has or has not been filed.

4. (1) A copy of the Caveat shall be served along with the notice required to be served under section 148-A(2).

(2) On receipt of the notice of the Caveat, the applicant or his Advocate shall intimate to the Caveator or his Advocate, the expenses for furnishing the copies and request him to collect the copies on payment of the said expenses. The said expenses should be at the rate of 25 paise per folio of 100 words inclusive of cost of paper.

5. Every application for any relief in a proceeding should be supported by a statement on oath of the applicant stating that no notice under section 148A(2) is received by him or if received whether the applicant has furnished the copies of the application together with the copies of the papers or documents which have

been filed or may be filed in support of the application to the Caveator as required by section 148A(4).

6. A notice under section 148A(3) may be served on the Caveator or his Advocate personally or by post under certificate of posting. The notice sent under certificate of posting at the address furnished by the Caveator shall be deemed to be sufficient service on him.

7. Where it appears to the Court that the object of granting ¹¹[ad] interim relief on the application would be defeated by delay, it may record reasons for such opinion and grant ¹²[ad] interim relief on the application of the applicant till further orders, ¹³[after] giving the Caveator an opportunity of being heard.

11. Substituted by Notification No. 3601/1982, Dt. 26-7-1982.

12. Substituted by Notification No. 3601/1982, Dt. 26-7-1982.

13. Substituted by Notification No. 3601/1982, Dt. 26-7-1982.

(FORM OF CAVEAT)

IN THE COURT OF

AT

SUIT/PETITION/APPEAL

NO.....19.....

In the matter of Caveat under
section 148-A

of the Code of Civil Procedure.

.....Caveator.

Prays that no orders be passed without due notice under section 148-A of the Code of Civil Procedure to the Caveator above named on any application for (State in short reliefs to be prayed for) in Suit/Petition/ Appeal No. of 19..... of this Court (or in a suit/ Petition/Appeal likely to be filed in this Court) wherein..... is/may be Plaintiff/Petitioner/Appellant and is/may be the Defendant/Respondent.

The Caveator's address for service is

The Caveator undertakes to the Court to give notice by Registered Post A.D. to the Plaintiff/Petitioner/Appellant abovementioned, at the following address.....

Caveator.

REGISTER OF CAVEAT (O.XL-A, R.3)

COURT OF THE.....OF.....AT

REGISTER OF CAVEAT IN THE YEAR 19

Serial No	Date of Caveat	Name of Caveator and his address for service	Nature of proceeding anticipated by Caveator and its number if same is filed	Name of Plaintiff Applicant in the proceeding column No.4	Name of defendant Respondent in proceeding in column No.4	Date and number of proceeding filed as anticipated by Caveator	Date of notice served on Caveator	Remark
1	2	3	4	5	6	7	8	9

* * * * *