

CHAPTER VII
PROCESSES, PROCESS FEES, PRINTING
CHARGES, SECURITY FOR COSTS
AND OTHER PROCEDURE AFTER
ADMISSION

¹1. Taxing of process fees and printing charges. — The Office shall tax process fees and the printing charges as follows :—

(a) Every petitioner, appellant or applicant shall pay process fees as prescribed in Rule 5(1)(a) of Chapter XIV of these rules at the time of institution of such proceeding.

(b) A petitioner, appellant or applicant shall not be required to pay process fees again till the proceeding is finally disposed of irrespective of whether processes are required to be issued again.

(c) Office shall tax printing charges within 3 days from the date of order directing payment of printing charges.

(d) Party shall deposit printing charges within 14 days from the date of taxing.

2. Supply of copies of memorandum of appeal, petition etc.

(i) In appeals, civil revision applications and other substantive applications, the appellant or the applicant shall along with the process fees, supply as many copies of the memorandum of appeal or application, together with copies of affidavits, if any, as there are respondents or opponents for service on respondents or opponents. The Registrar may, in appropriate cases, grant leave to file lesser number of copies.

(ii) In appeal from orders, the appellant shall supply all the papers referred to in Rule 14 of Chapter IV in such number as is necessary to serve upon all the respondents.

(iii) **Matter to be dismissed for non-prosecution in case of default of payment of process fees and failure to supply copies** – Immediately after the expiry of the time prescribed in the foregoing sub-rules of this rule for the supply of copies, the office shall place before the Registrar all such matters in which the

process fees have not been paid and / or the copies have not been supplied within the prescribed time and the Registrar shall dismiss all such matters for failure to prosecute :

Registrar's powers to excuse delay in supply of copies.

Provided, however, that, if the party or the advocate supplies the necessary copies within a period of fourteen days immediately after the period prescribed for the same under the foregoing sub-rules of this rule and also makes a regular application with the necessary court fee stamp for excusing the delay, the Registrar may excuse the delay and order that the process be issued.

IV. Stay order not to be communicated unless process fees are paid and copies are supplied –

No communication of any *ex-parte* order of the kind mentioned in rule 1(c) above shall be sent by writ or otherwise to the Lower Court, Tribunal or Authority or to the opposite party, unless process fees are paid and the necessary number of copies of the memorandum of appeal and / or application, as the case may be, together with the copies of affidavits, if any, prescribed in sub-rule (i) above are supplied both in the main matter (if any) and in the civil application in which the *ex-parte* order is made.

V. Affected party may move court for discharge of stay order after notice to other party –

A party against whom an *ex-parte* order of stay or injunction has been passed by the Court shall be entitled to approach the Court for getting the said order discharged, after giving 24 hours' notice to the party or parties who are likely to be affected by such order of discharge, if it is passed by the Court.

[1. Substitute by Notification No. P.3601/06, Dt. 18-10-2006.](#)

3. Date of hearing in notice to respondent or opponent. —

Subject to such general or special orders as may be made by the Registrar, the date to be entered in the notice to a respondent or an opponent as the earliest possible date of hearing, shall be not less than three months from the date of issue of the notice in First Appeals, two months in Second Appeals and one month in Short Notice or Expedited Matters, unless the Court orders otherwise.

²[4, Service of notice on respondents residing in Greater Bombay.— (1) Notice shall be sent for personal service to the party on his registered address. However, in addition the Court may in a particular case direct service of notice by registered post, acknowledgement due.]

2. Substituted by Notification No. 0102/1977, Dt. 22-3-1984.

(2) When an acknowledgment purporting to be signed by the respondent or opponent or his agent is received by the Court or the postal article containing the notice is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the respondent or opponent or his agent had refused to take delivery of the postal article containing the notice, when tendered to him, the Court issuing the notice shall declare that the notice had been duly served on the respondent or opponent:

Provided that, where the notice was properly addressed, prepaid and duly sent by registered post acknowledgment due, the declaration referred to in the sub-rule shall be made notwithstanding the fact that the acknowledgement having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of the issue of the notice.

5. Personal Service of notice on a person residing in Greater Bombay shall be made through the Court of Small Causes, Bombay and on a person residing elsewhere through the Court of the Civil Judge, Senior Division or the residing elsewhere through the Court of the Civil Judge, Senior Division or the Junior Division as the case may be within whose jurisdiction that person resides.

³[5A. In addition to other modes, urgent orders may be sent or communicated through FAX or E-Mail, wherever such facility is available, at the cost of the party.]

3. Added vide Mah. Govt. Gazette Dt. 26-9-1996, Part 4-C. Pge 432.

6. (1) Procedure when notices are returned unserved or served by affixing. — If a notice to a respondent or opponent is returned unserved or returned served by affixing on the registered address, the following procedure shall be adopted :—

(a) List of notices returned unserved and served by affixing to be published. — The office shall, on the first working day of the week, place on the Notice-Board under the signature of the Assistant Registrar a list showing the notices that have been

returned unserved and those that have been returned served by affixing at the registered addresses.

(b) Contents of the list. — The list shall state —

(i) the number of the proceeding.

(ii) the name of the Advocate for the appellant or applicant.

(iii) the name of the person on whom the notice has been returned unserved or served by affixing, showing his designation as opponent or respondent,

(iv) the date of the return, made to the Court by the Officer serving the notice, and

(v) the date on which the unserved notice or the notice served by affixing was received in the office.

(c) Publication of list to be sufficient notice. — The publication of this list on the Notice-Board shall be deemed to be sufficient intimation to the appellant or applicant, as the case may be, of non-service or of service by affixing the notice.

A copy of the list shall be given to the Advocates Association of Western India for its use.

(d) Procedure where notice is returned unserved or is served by affixing. — When the notices have been returned unserved, the party or his Advocate shall, within one month of the publication of the list, take the requisite steps for the issue of fresh notices; and where the notices have been served by affixing, the party or his Advocate shall within the aforesaid period supply postal stamps to cover the postal and registration charges.

(e) Dismissal for failure to prosecute. — Immediately after the expiry of the period prescribed under the foregoing sub-rule of this rule for taking the requisite steps for the issue of fresh notice or for supplying postal stamps to cover the postal and registration charges, the Office shall place before the Registrar all such matters in which steps have not been taken for the issue of fresh notices or the postal stamps to cover the postal and registration charges have not been supplied within the prescribed time, and the Registrar shall dismiss the matter for failure to prosecute :

Registrar's powers to excuse delay in taking action in regard to service of notice. — Provided, however, that, if the party or the

Advocate takes the requisite steps for the issue of fresh notices or supplies the postal stamps to cover the postal and registration charges within a period of 14 days next after the expiry of the period prescribed therefore under these foregoing sub-rules of this rule, and also makes a regular application with the necessary court-fee stamp for excusing the delay, the Registrar may excuse the delay and order the notices to issue.

(2) Procedure where party is reported to be dead and no action is taken within time to bring the heirs on record. —

In cases where 90 days have elapsed from the reported death of any of the parties to the appeal and no action has been taken by the appellant to bring the heirs of the deceased party on record the matter shall be placed before the Registrar for orders regarding the abatement of the appeal as against the deceased party as soon as possible.

7. Matters may be brought on for hearing though respondents are not served and heirs are not brought on record, if appellant so desires. —

When a notice to a respondent or opponent is not properly served or when a respondent or opponent is dead, and the appellant or applicant desires the matter to be brought on for hearing and disposal without the issue of a fresh notice or the substitution of the heirs of the deceased party, the proceeding shall not be regarded as unready merely because of the non-service on the party or the non-substitution of the heirs. The proceedings, if otherwise ready, shall be placed on the Warned List and the Weekly and Daily Boards with a note indicating that no action has been taken with regard to the non-service or the death of the party.

8. Kinds of applications which should bear process fee in addition to the prescribed court-fee. — The following applications shall bear in addition to the court-fee prescribed for such applications the prescribed process fee for service of rule or notice on the parties concerned :—

- (i) Application for fresh notice;
- (ii) Application for appointment of a guardian or next friend of a minor or lunatic;
- (iii) Application for substitution of heirs of deceased respondents or opponents;
- (iv) Application for service as majors on parties shown as minors.

9. Refund Certificate in respect of unutilized or excess stamps. — In cases where the stamps paid for process fee remain unutilized either because the service of the notice has become unnecessary owing to the voluntary appearance of the party to be served or for some other reason, and in cases where by mistake stamps of a greater value than necessary have been affixed by way of process fee, a refund certificate shall be granted to the party or his Advocate entitling him to the refund of the value of the stamps or the excess stamps, as the case may be;

Time limit for refund. — Provided that, a note to that effect is filed or motion for that purpose is made within one year from the date of the cancellation of the process stamps or before the final disposal of the case concerned, whichever is earlier.

Printing

10. (i) Where paper-books should be printed, and contents of paper-books. — In appeals other than those mentioned in sub-rule (ii) below the title-sheet, the substance and the grounds of appeal in this Court together with any note as to valuation made by the Advocate or the party below the memorandum of appeal and the judgment of the lower Court (and in the case of appeals from appellate decrees, the grounds of appeal or cross-objections, if any, in the lower appellate Court and the judgment of the trial Court) shall be got printed ⁴[typed either on Manual or Electronic Typewriter or on Computer or legibly Xeroxed] in the order mentioned. Cross-objections in appeals in which printing is required shall also be printed and shall be placed immediately after the grounds of appeal in this Court:

*[Provided where the record is required to be printed for the purpose of the Appeal before the High Court and the record is in English, then extra printed copies, in addition to the number of copies required by the High Court for the use in the Court, shall be prepared;]

4. Added by Notification Dt.1 -4-1998.

* Added by Notification No. 3601/92 Dt. 27-5-1992.

(ii) Where printing shall be dispensed with – Printing shall be dispensed with in appeals from orders, appeals arising out the Hindu Marriage Act and Special Marriage Act, and expedited

appeals other than First Appeals and with the leave of the Court in expedited First Appeals.

(iii) Appellant to supply copies of typed paper-book and title sheet where printing is dispensed with – In appeals except Appeals from Orders in which printing has been dispensed with under sub-rule (ii) above or in which the Court has dispensed with printing, the Appellant shall supply to the office for the use of the Court two copies of the typed paper-book containing the papers specified in sub-rule (i) above in the order therein mentioned and three separate copies of the title sheets, the substance and the grounds of appeal together with the grounds of Cross-objections, if any, for the engrossing of the Decree. The paper-books shall be neatly and legibly typed with double space between lines and a five centimeter margin on strong and durable paper of foolscap size or the size corresponding to the foolscap size in the metric measure. Every tenth line shall be numbered in the margin. The paper-books shall also be properly indexed and neatly bound with pages numbered consecutively. They shall be filed within two months of the order directing notice to issue or the order of the Court to the contrary. In Appeals from Orders the Appellant shall supply 3 copies of the title sheet, the substance and the grounds of Appeal together with cross-objection if any for the engrossing of the Decree.

The three copies of the title sheet etc., for engrossing the Decree shall be similarly typed on thick bound paper and supplied along with the copies of the paper-book.

(iv) Court may order respondent to furnish copies of paper-book and title sheet – Where printing is dispensed with by an order of the Court, the Court may, notwithstanding the provisions of sub-rule (iii) above, direct the respondent to furnish copies of the paper-book and the title sheet, in which case the party so directed will supply copies of the paper-book and the title sheet in the manner and within the time mentioned in sub-rule (iii).

(v) Opposite party to be supplied with copy of paper-book by the party concerned – The party concerned shall in addition furnish to the Advocate appearing for the opposite party a copy of the paper-book, and where the opposite party appears in person, deposit in the office such a copy for the use of the opposite party. Copy to be so furnished or deposited shall be an exact duplicate of the paper-book, the copies of which are supplied for the use of the Court, and shall be neatly and legibly typed in the

manner indicated in sub-rule (iii) above, and shall be paged identically.

(vi) Matter to be dismissed for non-prosecution where copies of paper-book etc. are not filed within time – Immediately after the expiry of the periods prescribed under sub-rules (iii) and (iv) above for the supply of paper-books the office shall before the Registrar all such matters in which paper-books and the title sheets have not been supplied within the prescribed time, and the Registrar shall dismiss all such matters for failure to prosecute :

Registrar's powers to excuse delay in filing copies of paper-book etc. – Provided, however, that, if the party or the Advocate supplies the necessary paper-books within a period of two months next after the expiry of the period prescribed under sub-rules (iii) and (iv) above and also makes a regular application with necessary court-fee stamp for excusing the delay, the Registrar may excuse the delay and accept the paper-books.

11. (i) Cost of printing and payment thereof. – The appropriate party shall, within 14 days of the date of the order directing the issue of notice or of the date of admission, as the case may be, pay in Court-fee stamps Rs.15 per appeal and Rs.5 per cross-appeal or joint appeal or cross-objections to cover the cost of printing the judgments of the lower Courts and the memorandum of appeal or of cross-objections.

(ii) Matter to be dismissed for non-prosecution where costs of printing are not paid within time. – Immediately after the expiry of the period prescribed under sub-rule (i) above for the payment of the costs of printing, the office shall place before the Registrar all such matters in which costs of printing have not been paid within the prescribed time, and the Registrar shall (dismiss all such matters for failure to prosecute :

Registrar's powers to excuse delay in payment of costs of printing.— Provided, however, that, if the party or the Advocate pays the costs of printing within a period of 14 days next after the expiry of the period prescribed under sub-rule (i) above and also makes a regular application with necessary court-fee stamp for excuse of delay, the Registrar may excuse the delay and order the matter to be proceeded with.

(iii) Excess of unutilised amount of costs of printing to be refunded. – If the amount in court-fee stamps as specified in sub-rule (i) is paid by a party and the memorandum of appeal and the judgment of the lower Court are, for any reason, not

subsequently printed or the amount paid is found to be in excess of what is required to be paid after the matter is printed, the Registrar shall on application by the said party or his Advocate, grant to him a refund certificate enabling him to recover the value of such court-fee stamps or such excess court-fee stamps, as the case may be.

(iv) Costs of printing paid to be entered in the bill of costs. — Where the amount is paid but no portion of it is refunded the whole of such amount shall be entered in the bill of costs as costs of the appeal. Where, however, the amount paid is in excess of what is required to be paid in accordance with sub-rule (i) and such excess amount is refunded to the party or his Advocate, only the amount so required to be paid shall be entered in the bill of costs as costs of the appeal and not the excess.

(v) Supply of copies of printed paper-book free and for payment. — Each party or set of parties having the same interest shall be entitled to one copy of the printed paper-book free of costs; any additional copies shall each be charged for at the rate of 50 Paise per printed page.

(vi) Procedure where additional copies of paper-book are required.— A party requiring additional copies may, at any time before the papers are sent to the press, give notice to the Registrar's office of the number of additional copies required by him.

12. Parties supplying paper-books, entitled to costs where printing be dispensed with. — Where printing has been dispensed with and the copies have been supplied either under the rules or by the order of the Court, the party supplying the typed paper-books shall be entitled to the costs of preparing the same at the rate of 50 Paise per folio of 100 words inclusive of the costs of all the copies and paper charges for the first five copies and where more than five copies are taken out the further copies shall be separately charged at the same rate at which the first five copies are charged as above.

13. Supply of additional paper-books on reference to a larger Bench. — (1) When an appeal or application is referred to a Division Bench of two Judges or a Full Bench of three or more Judges, the appellant or applicant or his Advocate shall furnish to the office the necessary additional sets of typed copies of the paper-book for the use of the Division Bench or the Full Bench, as the case may be, within two weeks of the date on which it is so referred.

(2) The Registrar may extend the time for supplying such additional copies or excuse delay in supplying the same for a period not exceeding one week. Where copies are not supplied within the time so prescribed or extended, the matter shall be placed before the Court for orders.

14. Supply by applicants of copies of formal applications to opposite parties. — A party or an Advocate presenting an application of a formal nature in an appeal or application, shall furnish the necessary number of copies thereof for the use of the Court and shall also serve a copy on each of the opposite parties.

15. Supply of copies of affidavits and counter affidavits for use of Court and service thereof on opposite parties. — When affidavits and/or counter affidavits are filed by any party in any matter which has been admitted, such party or his Advocate shall supply the necessary number of copies of such affidavits for the use of the Court and shall get copies thereof served on each of the opposite parties or their Advocates.

Security for Costs

16. Security for costs to be deposited with the Nazir. — When any party has been ordered to furnish security for costs, such security shall be furnished either in cash or by the deposit and transfer of Government Securities or other approved securities for the amount ordered by the Court. Such cash security shall be deposited with the Nazir.

17. Rules regarding security for costs deposited with the Nazir. — In the case of money deposited with the Nazir as security for costs under Order XLI, rule 10, Civil Procedure Code, the following rules shall be observed:—

(I) When a deposit of money has been made by the appellant in place of giving security for costs, any surplus in excess of the secured costs shall be returned to the appellant, or his Advocate, as soon as the bill of costs has been prepared and the decree issued.

(II) Deposits unclaimed for ten years after the date of the Final decree shall be credited to Government.

(III) For the purposes of these rules, the Advocate, who represented the depositor in the appeal shall be entitled to receive the refund —

(i) as a matter of course, within one year from the date of the Final decree.

(ii) on making a written-statement that his client is alive and that he still represents such client, if more than a year has elapsed from the date of the Final decree.

(IV) If a depositor dies after the decision of the appeal or application in which the deposit was made, it shall not, if in excess of Rs.200, be returned to the person claiming to be his legal representative, unless he establishes his right thereto by letters of administration, probate or a succession certificate. If the deposit is not in excess of Rs.200, the Registrar may return it to the person claiming to be the legal representative of the depositor on the production of such evidence as the Registrar may deem sufficient.

(V) Depositors of sums over Rs.500 should be advised to, and may purchase and deposit, instead of such sums, Government Securities of equal amount so as to avoid loss of interest.

(VI) A list of all moneys in deposit as security for costs shall be published on the Notice Board once a year on the First day of July.

Cross-Objections

18. Service of cross-objections on the appellant or co-respondents.— Any party or his Advocate presenting any cross-objections under Order XLI, rule 22 of the Code of Civil Procedure shall cause to be served a copy thereof on the Advocate for the appellant or co-respondents if any, if such appellants or co-respondents are represented by an Advocate. An appellant or co-respondent affected by such cross-objections who is not represented by an Advocate shall be served with the notice of the cross-objections together with a copy of the objections in the manner prescribed for service of notices. Within 14 days of the cross-objections being admitted to the file, the party Filing the same shall pay the prescribed amount of process fee and supply the requisite number of copies of the objections for service and pay the printing charges if so prescribed by the rules. The procedure prescribed for appeals shall apply mutatis mutandis to cross-objections.

Notification of findings on issues.

19. Notification of Findings on issues. — When issues in any appeal have been sent down to the lower Court, the receipt of the findings from the lower Court shall be notified on the Board and a copy thereof shall be sent to the Secretary to the Advocates

Association of Western India. The parties shall file objections to such findings within ten days from the day of such notification.

20. Notice of restoration to file, when rule nisi made absolute ex parte. — Whenever a rule nisi has been made absolute in the absence of the opposite party, and the effect of such orders is to bring the case on the file again, a notice of the date fixed for hearing shall be given to the opposite party.

Record and Proceedings.

21. Writ calling for Record and Proceedings and notification of their receipt. — (i) In appeals other than those referred to in sub-rule (ii) below, and in revision applications from decrees and from orders in cases which have been finally disposed of in the lower Courts, the office shall call for the Record and Proceedings as soon as notice has been ordered to issue.

(ii) In the case of appeals from orders, appeal in execution proceedings, appeal arising from miscellaneous proceedings, revision applications other than those mentioned in sub-rule (i) above, and in applications for leave to appeal to the Supreme Court, Records and Proceedings of the lower Court shall not be called for by the Office, unless the Court of its own accord, or on application of the party, has ordered them to be sent for

(iii) The receipt of the Record and Proceedings in the office shall be notified on the Notice Board as soon as the same are received.

General.

22. Supply of copy of interlocutory application of affidavit for use of opposite party. — If after a respondent or an opponent has entered his appearance in any appeal or application, either party files any interlocutory application or affidavit, a copy of the interlocutory application or affidavit, as the case may be, shall be given forthwith to the Advocate appearing for the opposite party. If the opposite party appears in person, a copy shall be filed for his use in the office.

23. Procedure for revision of Registrar's order of dismissal for failure to prosecute. — Notwithstanding anything contained in Rule 7 of Chapter II, an order of the Registrar dismissing a matter for failure to prosecute under any of the provisions of this Chapter shall be revisable only upon a regular stamped application which

shall be filed within seven days from the date of the order of the Registrar complained of, provided that the Court may for good cause shown condone the delay in making the application. Such application shall, unless dispensed with by the Court, be supported by an affidavit explaining the circumstances under which the various steps could not be taken within the prescribed time.

* * * * *

Bombay High Court Judges' Library