

CHAPTER 4

Special Procedure

PART I—CRIMINAL

Part A

SPECIAL RULES OF PROCEDURE IN ORIGINAL CRIMINAL CASES [OMITTED]

[*Note*—In view of the new Criminal Procedure Code Section 391 has replaced Section 428 of old Code so this Chapter is no importance because original Criminal Jurisdiction of High Courts has been abolished.]

Part B

RULES REGARDING THE SUMMONING AND EMPANELLING OF JURORS [OMITTED]

[In view of the new Criminal Procedure Code, 1973 this Chapter has now become redundant].

Part C

SUBSISTENCE AND TRAVELLING ALLOWANCE TO COMPLAINANTS AND WITNESSES ATTENDING TRIALS BEFORE THE HIGH COURT [OMITTED]

[By the new Criminal Procedure Code, original Criminal Jurisdiction of High Court has been abolished so this Chapter is not relevant now.]

Part D

RULES OF PROCEDURE IN CASES UNDER SECTION 374 (366 NEW CODE) OF THE CODE OF CRIMINAL PROCEDURE

1. Procedure—The rules of procedure to be followed by Sessions Judges in the submission of proceedings to the High Court under Section 374 (366 New Code) of the Code of Criminal Procedure are contained in Chapter 24B, Rules and Order, Volume III.

2. Printing of record—On receipt of the proceedings the Deputy Registrar shall take immediate steps to have the record printed under the rules next following.

3. Contents of printed record—The printed record in Murder Reference Cases shall consist of the following documents :

1. Opening sheet of Sessions record.
2. Notes and Orders of the Sessions Judge.
3. Charge Sheet.
4. First Information Report.

5. Inquest Report.
 6. Report of Chemical Examiner and Serologist, if any.
 7. Statements under Section 364 (New Code 281) Criminal Procedure Code.
 8. Examination under Section 364 (New Code 281) by the Magistrate.
 9. Record of evidence in Court of Session with any further examination under Section 364 (New Code 281) Criminal Procedure Code, and altered charge, if any.
 10. Material Documentary evidence, if any. .
 11. Judgment of Sessions Judge.
 12. Petition of Appeal.
- 4. Copies of the record**—Fourteen copies of the Sessions record shall be printed at Government expense with the least possible delay, if there is only one accused, but in case the number of the accused exceeds one, an extra copy shall be printed for each additional accused.
- 5. Defence counsel at Government expense**—In a case where the Sessions Judge certifies that the accused person cannot afford to engage counsel for his defence in the High Court, the Deputy Registrar shall take steps to have counsel engaged for his defence at Government expense.
- 6. Time limit for hearing Murder Reference**—The hearing of the Murder Reference, in view of confirmation or otherwise of the sentence of death passed by the Sessions Judge under Section 374 [New Code 366(1)] of the Code of Criminal Procedure, shall take place as a rule within about six weeks after the date of despatch of the copy of Sessions Judge’s judgment to the convict.
- 7. Information of decision to accused**—Immediately on the sentence of death being confirmed or not confirmed, as the case may be, by the High Court, the Deputy Registrar shall inform the Superintendent of the jail in which the prisoner is confined of the decision and direct him to communicate the same to the prisoner forthwith. The Deputy Registrar shall at the same time inform the Sessions Judge concerned and return the records to him for taking steps under Section 381 (New Code 413) of the Criminal Procedure Code. Copies of the High Court judgment shall be sent to that officer later, and as promptly as possible.
- 8. Record to be sent to Government**—The record of every case as prepared for the use of the High Court in which the sentence of death has been confirmed by the High Court, together with a copy of the High Court judgment and translations of Police Zimnis, shall, as soon as orders have been passed confirming the death sentence, be forwarded to the State Government.

Part E
RULES REGARDING LEGAL ASSISTANCE TO PERSONS IN CRIMINAL CASE IN THE
HIGH COURT

¹The High Court has framed the following rules for giving legal assistance to persons in Criminal Cases :

1. Recommendations for legal assistance at Government expense to persons charged with

1. Amended vide Notification No. 736/Rules, dated 24-7-78.

offences punishable with death—(a) [2];

(b) When an accused person has been called upon by the High Court to show cause why a lesser sentence should not be enhanced to a sentence of death, the District Magistrate, on receipt of a notice for service upon the person called upon to show cause, shall, if he is satisfied that the accused is unable, because of poverty, to engage counsel for his defence furnish a certificate that the accused is entitled to be defended by a counsel at Government expense;

(c) When a sentence of death is referred by a Sessions Judge to the High Court for confirmation under the provisions of Section 366, Criminal Procedure Code, the Sessions Judge shall not whether the accused person was represented by counsel in his Court, and whether the accused can afford to engage counsel for his defence in the High Court.

2. High Court may arrange counsel at Government expense in case other than of poverty— If the High Court decides that the accused is unable on account of poverty to engage counsel for his defence, the High Court shall make arrangements to employ counsel at Government expense.

The High Court may also employ counsel, if it thinks fit, in every case when the accused is unrepresented, irrespective of considerations relative to the means of the accused to engage counsel.

2-A. High Court may arrange counsel at Government expense in any criminal case— Notwithstanding anything contained in the forgoing rules, the High Court may, if it considers necessary so to do make arrangements to employ counsel at Government expense in any criminal case if the accused appellant/petitioner/respondent is unable to engage a counsel.

3. List of selected defence counsels to be kept—The High Court shall for the above purpose, maintain a list of legal practitioners whom the Chief Justice may select from time to time as fit to be employed in such cases.

4. Printed record to be supplied free of cost in advance to defence counsel—When a counsel is required, the Court will ordinarily select from this list a legal practitioner to appear for the accused appellant/petitioner/ respondent. Counsel appointed in such cases, should be given sufficient time to enable him to study the necessary documents, which will be the record of the case as prepared in the High Court. This will be supplied free of cost.

³[**5. Scales of fees of defence counsels—**The legal practitioner so appointed shall receive a fee as per the table annexed to this part. The certificate shall be issued by the Branch within one month without bothering the Hon'ble Judges. The payment shall be made through the Govt. of N.C.T. of Delhi on the production of the said certificate signed by the Registrar.

TABLE

S.No.	Description of work	Proposed
<u>Drafting:</u> (Criminal Matters)		
1.	Criminal appeal	Rs.1,500/- one time total payment. Where the pleadings in connected cases or batch matters are substantially similar, the advocate will be entitled to an additional drafting fee of Rs.1,000/- per case, subject

² Clause (a) deleted vide Notification No. 316/Rules/DHC dated 14.7.2011

³ Rule 5 Substituted vide Notification No. 741/Estt./E-VI/DHC dated 10-1-2002 and further substituted vide Notification No. 316/Rules/DHC dated 14.7.2011

		to a maximum total of Rs.5,000/- per group of connected cases or batch matters.
2.	Criminal Revision, bail application, anticipatory bail application, parole application, suspension application and any other application.	Rs.500/- subject to a maximum of Rs.1,000/- per FIR Additional drafting fee is not payable in connected or batch matters arising out of same FIR.
<u>Acting:</u>		
1.	All cases before an Hon'ble Single Judge.	Rs.2,000/- on admission of the case and Rs.4,000/- on final disposal of the case.
2.	All cases before a Division Bench.	Rs.3,000/- on admission of the case and Rs.6,000/- on final disposal of the case.
3.	Bail application, anticipatory bail application, parole application, suspension application and any other application.	Rs.500/- per FIR subject to a maximum total of Rs.1,000/- per FIR.
<u>Miscellaneous Expenses:</u>		
1.	Typing	Rs.15/- per page (1+3)
2.	Photocopy	Rs.0.50 photocopy (per page)
3.	Clerkage	10% of the fee subject to a maximum of Rs,2000/-.

GENERAL CONDITIONS:-

1.	Appeals/Revisions or Petitions arising from one common judgment/order will be considered as one case.
2.	When misc. applications are filed in a case, including transfer petition only drafting and typing charges will be payable and no separate fee will be payable.
3.	When counsel is changed during the pendency of the case fee will be payable as per the stage fixed hereinabove.
4.	Fees payable in any case not covered in the schedule specifically shall be at the discretion of the Court/Judge, whose decision shall be final.

5.	In the event of any doubt or difference of opinion regarding the honorarium payable, the decision of the Court/Judge shall be final and binding.
6.	The revised rates of the Fee/Honorarium shall be applicable from the date of approval. Cases already settled will not be re-opened.

Part F (a)

RULES FRAMED BY THE HIGH COURT FOR THE ISSUE OF WRITS OF HABEAS CORPUS UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 491(2) OF THE CODE OF CRIMINAL PROCEDURE, 1898

1. Application how made—An application for a writ of habeas corpus shall be filed with the Deputy Registrar and shall be accompanied by an affidavit of the person restrained stating that the application is made at his instance and setting out the nature and circumstances of the restraint:

Provided that where the person restrained is unable owing to the restraint to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other person, which shall also state the reason why the person restrained is unable to make the affidavit himself; and

Provided further that all communications addressed to the High Court by a person in the custody of a public officer complaining of his detention or the conditions of his detention, whether supported by affidavit or not, shall be laid before the Court for orders as applications under this rule.

2. (i) Simultaneous applications—The applicant shall also state both in the application and affidavit whether a more or less similar application has been made to the Supreme Court and if so shall append thereto a copy of the application and a copy of the orders, if any, passed by the Supreme Court.

(ii) Stay pending decision by Supreme Court—In case any simultaneous application has been made to the Supreme Court, the hearing of the application to the High Court will ordinarily be adjourned pending the decision of the Supreme Court in the matter.

3. Bench—The Bench for hearing an application for a writ of habeas corpus shall be as laid down in clause (xx) of Rule 1 of Chapter 3B, Volume V, High Court Rules and Orders.

4. Rule nisi—If the Court is of the opinion that a *prima facie* case for granting the application is made out, a rule *nisi* shall be issued calling upon the person or persons against whom the order is sought, to appear on a day to be named therein to show cause why such orders should not be made absolute and at the same time to produce in Court the body of the person or persons alleged to be illegally or improperly detained then and there to be dealt with according to law:

Provided however that the Court may in any particular case order that the production of the body of the person restrained may be dispensed with.

5. Copy for respondent(s)—If the Court grants a rule, the applicant shall, unless the admitting Bench orders otherwise, file two typed copies of the application, with copies of enclosures, for the use of the Court and an additional typed copy or copies, as the case may be of the application

for being supplied to the person(s) or authority upon whom the writ is to be served.

6. Service of Summons—The summons or notice of rule aforesaid shall be served on the person against whom the issue of the writ is sought and on such other person as the Court or Judge may direct, and, unless the Court or Judge otherwise directs, there shall be at least eight clear days between the service of the summons or notice and the date named therein for the hearing of the application.

7. Search warrants—(i) If the application for a writ of habeas corpus alleges that the person is confined under such circumstances that the confinement amounts to an offence, the Court may, at the time of issuing a rule *nisi* also issue a search warrant, and the person to whom the warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately brought before the Court, which shall make such order as in the circumstances of the case may seem to be proper.

(ii) The provisions of Sections 43, 75, 77, 79, 82, 83 and 84 of the Code of Criminal Procedure, shall, so far as may be, apply to all such warrants issued under clause (i) of this rule.

(iii) If the Court issuing a search warrant under clause (i) of this rule has reasons to believe that the person to whom the warrant has been directed may not be able to identify the person confined, the Court may order a person named in the warrant to accompany the person to whom the warrant is directed, to assist him in the execution of the warrant.

8. The writ or the warrant shall along with a copy of application and a copy of the order be served by the Bailiff of the Court or by such other person as may be appointed by the Judge. Where the application is by or on behalf of a security prisoner, the writ will be served on the Government and not on the officer detaining the prisoner.

For the purposes of this rule a security prisoner is a person detained by the order of the Central Government or the State Government, under Section 3 of The Preventive Detention Act, 1950 (No. IV of 1950) or under the Punjab Security of the State Act, 1953 (Punjab Act No. XII of 1953).

9. Recording evidence—The Court may, if necessary, in disposing of such rule, take evidence or direct a Court of Session or a Magistrate to take evidence.

10. Orders—On the returnable day of such rule or on any day to which the hearing thereof may be adjourned if no cause is shown or if cause is shown and disallowed, the Court shall pass an order that the person or persons, improperly detained shall be set at liberty. If the cause is allowed, the rule shall be discharged.

11. Release order returnable immediately—Where a person ordered to be set at liberty under the foregoing rule is not present in Court, an order for his release shall be issued forthwith to the authority or person restraining him. This order shall be made returnable, duly executed, immediately after service on the said authority or person, to the Court indicated in the order of release.

12. Release order how served—The order of release shall be served personally if possible, upon the person to whom it is directed; or if no possible, or if the order be directed to a gaoler or other public official, by leaving it with a servant or agent of the person to whom the order is directed at the place where the prisoner is confined or restrained.

13. Release order sufficient warrant to gaoler etc.—The order for release made by the Court,

or the Judge, shall be sufficient warrant to any gaoler, public official or other persons for the release of the person under restraint.

14. Control and direction over custody of prisoner—Upon the return and the production of the party on whose behalf the rule was issued, the custody of the prisoner shall be under the control and direction of the Court until the disposal of the rule. Pending the hearing, the Court may admit the prisoner to bail or remand him to the prison where he is in custody.

15. Costs—In disposing of any such rule, the Court may in its discretion make such order for costs as it may consider just.

16. Forms—The forms of warrants Nos. 1 and 2 in the Appendix to these rules shall be used in these proceedings.

APPENDIX (*See Rule 16*)

Form of Warrant No. 1 (*See Rule 4*)

Delhi High Court

To the officer in charge of (name of jail or lunatic asylum or other place, where the person is detained in custody) or to (name of person).

You are hereby required to have the body of B.C. now a prisoner in your custody (or now in your custody) before the High Court, on the day of next, by of the clock in the forenoon of the same day to be dealt with according to law and you shall then and there abide by such order as shall in that behalf be made by the said Court (if the prisoner is detained in public custody add) and unless the said B.C. shall then and there, by the said Court, be ordered to be released, you shall, after the said Court shall have dispensed with his further attendance cause him to be conveyed, under safe and sure custody, back to the said (Jail or asylum or other place of custody).

Given under my hand and the seal of the Delhi High Court, this day of 19

Deputy Registrar.

Form of Search Warrant No. 2 (*See Rule 7*)

Delhi High Court

To

(The name and designation of the person to whom the warrant is directed).

Whereas information has been laid before this Court that (give the name and description of the person alleged to be illegally detained) is being illegally detained in (describe the house or place where the person illegally detained). This is to authorise and require you, with the assistance of (give the description of the person authorised to accompany the person to whom the warrant is directed) to search for the aforesaid (give the name and description of the person illegally detained) in the (describe the place to which the search is to be confined) and, if found, to produce him forthwith before this Court to be dealt with according to law.

Given under my hand and the seal of the Delhi High Court, the day of 19

Deputy Registrar.

PART II – CIVIL

Part F(b)

RULES FRAMED BY THE HIGH COURT FOR ISSUE OF WRITS OF MANDAMUS, PROHIBITION, QUO WARRANTO AND CERTIORARI UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

[Note : Please see Notification No. 17 Judicial/Rules of the Delhi High Court given immediately after these Rules]

1. Every application for the issue of any directions, or orders or writs in the nature of *mandamus*, *prohibition*, *quo warranto* or *ceriorari* mentioned in Article 226 of the Constitution of India, shall set forth all the facts and grounds on which the relief is sought, and shall be supported by affidavit. The application shall also state both in the application and the affidavit whether a more or less similar application has been made to the Supreme Court and if so shall append thereto a copy of the application and a copy of the orders, if any, passed by the Supreme Court.

1-A. (i) All petitions under Article 226 of the Constitution of India, wherein a prayer for stay or any other interim relief is contained shall be made on motion after notice to the parties effected thereby.

(ii) The notice referred to above shall be served personally or through registered post acknowledgement due on the parties affected not less than five clear days before the day the petition is filed and shall be accompanied by a copy of the main petition and shall also contain the time and place of moving of petition.

(iii) The main petition shall contain an averment that the notice referred to in sub-rule (ii) above has been duly served.

COMMENTS

A person obtaining an *ex-parte* order of a rule *nisi* by means of petition for the exercise of the extraordinary powers under Article 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. *Bhupinder Pal Kaur v. Financial Commissioner (Revenue) Punjab*, 1968 (70) P.L.R. 169.

(iv) If the petition is not made on the date intimate to the opposite party or parties, it shall be incumbent on the petitioner to serve a fresh notice of his intention to move the petition in accordance with the provisions of sub-rule (i) above.

(v) Where the delay caused by notice is likely to entail serious hardship, an application may be made for an ad interim *ex parte* order duly supported by an affidavit and the Court, if satisfied that the delay caused by the notice would entail serious hardship may make an order *ex parte* upon such terms as to costs or otherwise and subject to such undertaking, if any, as the Court may think just and proper.

2. An application under Rule 1 except Civil Writs final or interim orders passed by the Election Tribunals under the Representation of the People Act (XLIII of 1950) shall be heard and disposed of by a Single Bench. In case, any simultaneous application has been made in the Supreme Court, the hearing of the application to the High Court ordinarily be adjourned pending the decision of the Supreme Court in the matter.

3. The Court may either summarily dismiss the application or order a rule *nisi* to be issued against the opponent against whom, it is sought/as it thinks fit. Any rule so granted shall be made returnable on such day as the Court may direct, but it shall not be made returnable within less than fourteen days after service thereof on the opponent.

COMMENTS

An order of Division Bench of the High Court in a review application re-admitting the writ petition which had been originally dismissed in limine is not nullity in the eye of law on account of the order in review having been passed without notice of the review application to the respondent in the case. *Yogesh Chander Bahree v. The Registrar Punjab University, Chandigarh*, (1966) 68 P.L.R. 718.

3-A. If the Court grants a rule, the applicant shall file two typed copies of the application, with copies of enclosures, for the use of the Court. He shall also file additional typed copy or copies, as the case may be, of the application for being supplied to the opponent(s).

4. If the Court grants a rule, it may make such interim or interlocutory order in the case, either unconditionally or upon such terms and conditions as the Court thinks just as the nature and circumstances of the case may require.

5. The *rule nisi* granted as above shall alongwith a copy of the application and a copy of the order, if any, made under the last preceding rule, be served on the opponent in the manner prescribed in Order V of the Civil Procedure Code for the service of summons upon a defendant in a suit.

6. An answer to the *rule nisi* or notice showing cause against such application shall be made in person or through an Advocate by filing an affidavit, engrossed on judicial paper typed in double-spacing and on one side of the paper only, in the office of the Registrar of by depositing the same in the petition box of the Court kept outside the room of the Deputy Registrar (Judicial) between the hours of 10 a.m. and 4 p.m. on any day which is not a Court holiday. The written statement of the affidavit in reply to the writ petition shall not be received by the Registry and shall not be deemed to have been filed unless an advance copy of the same has been served on the counsel for the petitioner and his acknowledgement obtained on the original written statement on a day at least two days before the returnable date of the rule or notice. In a case where the petitioner is not represented by counsel, the written statement or affidavit in reply to the writ petition shall be accompanied by a post office registration receipt showing the despatch of a copy of the same to the petitioner under a registered acknowledgement due cover at least two days before the returnable date of the rule or the notice. Written statement or affidavit sent by a petitioner or respondent to the Registry of the Court by post shall not be entertained by the Court and it shall be liable to be returned per bearing post. All annexures to writ petitions and written statements or affidavits shall unless they are original documents, be typed and engrossed on judicial paper in double spacing on one side of paper only.

COMMENTS

A written statement to a writ petition under Article 226 of the Constitution has to be in the form of an affidavit as prescribed by Rule 6. Affidavits have to be drawn verified and sworn properly and have to conform to the requirements of Rule 3(1) of Order 19 C.P.C. *Workmen of Oswal Weaving Factory v. State of Punjab*, AIR 1976 Punjab 532.

7. The Court may in its discretion, at any time before the final order is made on the application, order the rule *nisi* to be served on any party to be affected, by any order which the Court may make in the matter. The provisions contained in the last two preceding rules relating to service of the rule and filing of an affidavit in reply shall apply to such a case.

8. No further affidavit or affidavits shall be filed by any party except with the leave of the Court.

9. If cause be shown or answer made upon affidavit putting in issue any material question of fact, the Court may allow oral testimony of witnesses to be taken and for that purpose may adjourn the hearing of the rule to some other date. In such a case either party may obtain summons to witnesses, and the procedure in all other respects shall be similar to that followed in original causes in the High Court.

10. In case of difference of opinion between the Judges composing the Divisional Court, the point of difference shall be decided in accordance with the procedure referred to in Clause 26 of the Letters Patent.

COMMENTS

The mandate of law is that in case the Division Court is composed of two Judges and the Judges are equally divided in opinion as to the decision to be given on any point, they should specifically state the point upon which they differ and the case should be heard on that point only by a third Judge and the point should be decided according to the opinion of the majority of Judges. Hearing by third Judge is confined to the specific points stated in the reference and cannot cover the whole case again. *Amar Pal Singh v. Election Commission of India*, AIR 1993 Delhi 316.

11. The costs of all applications and orders made under this Chapter shall be in the discretion of the Court.

Notification of the Delhi High Court No. 17-Judicial/Rules, Dated the 1st February, 1967

In exercise of the powers conferred by Section 7 of the Delhi High Court Act, 1966, the Hon'ble the Chief Justice and Hon'ble Judges of the Delhi High Court are pleased to make the following amendment in the Rules and Orders of High Court Volume V:

1. Every petition for the issue of any direction, order or writ in the nature of *mandamus*, *prohibition*, *quo warranto* or *certiorari*, mentioned in Article 226 of the Constitution of India, shall be in writing and shall set out the name and description of the petitioner, the nature of the relief sought and the grounds on which it is sought, and shall be accompanied by an affidavit verifying the facts relied on, and at least ⁴[two typed, photostat or computerised copies] of the petition and affidavit shall be lodged in the Registry. ⁵[The petition shall state whether the petitioner has moved the Supreme Court or any High Court for similar relief and if so, copies of the said petition to the Supreme Court/High Court and the order made thereon shall also be filed].

⁶[The writ Petition shall be accompanied by a chronological statement of necessary facts.]

⁷[1-A If the respondent in a Civil Writ Petition is either the Union of India, National Capital Territory of Delhi, Lt. Governor, Delhi Development Authority, Municipal Corporation of Delhi, New Delhi Municipal Council, Delhi Electric Supply Undertaking, Delhi Transport Corporation, Nationalised Bank, Public Sector Undertaking, Government Company, Insurance Company or any other statutory of public authority then the petition and paper books, with one extra copy, shall be delivered in advance to the nominated counsel (within the meaning of Rule 1-8) and acknowledgement obtained by the writ-petitioner. The acknowledgement above-mentioned shall be deemed to be sufficient service in the Civil Writ Petition on the said Department/Authority above-mentioned. A letter will also be served on the nominated counsel that the matter will be

4. Substituted for words "three copies" vide Notification No. 38/Rules/8425 dated 15-3-2002.

⁵. Substituted vide Notification No.226/Rules/DHC dated 12.9.2006.

6. Added vide Notification No. 208/DHC/Rules dated 5-8-1988.

7. Rules 1-A & 1-B inserted vide Notification No. 495/Rules/DHC dated 17-11-1995 (w.e.f. 1-1-1996).

coming up for admission in the next few days. It will be for the party/counsel of the Department/Authority above-mentioned to take note of the case in the cause list and be present when the matter or a C.M. therein comes up for admission/hearing. Or else, the Court may set the said respondent *ex parte* and pass orders.

1-B. The Government and the authorities referred to in Rule 1-A shall nominate a counsel authorised to accept and acknowledge delivery of petition, paper books in the writ petitions filed or likely to be filed against it. A list of such nominated counsel shall be maintained in the Registry and shall also be given to the Bar Association.]

⁸[**1-C.** In writ petitions arising out of orders passed by statutory authorities e.g. Central Administrative Tribunal (CAT), Labour Court, Industrial Tribunal, Delhi School Tribunal, Debts Recovery Tribunal (DRT), Customs, Excise and Gold Control Appellate Tribunal(CEGAT)(now Customs, Excise & Service Tax Appellate Tribunal),Income Tax Appellate Tribunal(ITAT),Election Tribunal, Board for Industrial & Financial Reconstruction(BIFR)/Appellate Authority for Industrial & Financial Re-construction(AAIFR), etc., a caveat will be entertained by the Registry”.

NOTE:-Proforma of the prescribed Caveat form is annexure 'A'

ANNEXURE- 'A'

IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL JURISDICTION

CAVEAT NO. _____ OF 200

In the matter of a writ petition instituted (give the particulars)

or expected to be instituted, by

_____Petitioner(s)

Against

⁸. Rules 1-C & 1-D added vide notification No.116/Rules/DHC dated 12.2.2004

_____ Respondent(s)

To

The Registrar General,
Delhi High Court,
New Delhi.

Let no order (here state in detail the precise nature of the order apprehended) be made in the above matter without notice to the undersigned.

Dated this the _____ day of _____ 200

Name and address of the
Caveator and his counsel
if any.

Filed on _____

“1-D. As in Letters Patent Appeal (LPA), a litigant filing a writ petition against an order of Central Administrative Tribunal(CAT),shall file on record all the pleadings and documents that were before Central Administrative Tribunal(CAT) alongwith a certificate that no document that was not before the Central Administrative Tribunal(CAT) has been filed with the writ petition.]

⁹[2. The petition shall be posted before the Court or preliminary hearing and orders. Upon the hearing, the Court if satisfied that no case has been made out for its interference may dismiss the petition and if not so satisfied shall direct a *rule nisi* to be issued to the respondent calling upon him to show cause why the order sought should not be made, and shall adjourn the hearing for the respondent to appear and be heard.]

3. (1) Upon making the order for a rule *nisi*, Court may, if it thinks fit, grant *ex parte* such *ad interim* relief to the petitioner as the justice of the case may require, upon such terms, if any, as it may consider just and proper.

(2) Notice of every such *ex parte* order shall be given to the party affected thereby and, unless the Court has appointed a day for the return of the said notice, or otherwise directs, the Registrar shall fix a date for the return of the said notice and the application for *ad interim* relief shall be posted before the Court for final orders on the returnable date.

4. The rule *nisi* together with a copy of the petition, the affidavit in support thereof, the other accompanying documents and of any *ad interim* order therein together with a copy of the application on which such order is based shall be served on the respondent not less than 28 days before the date fixed for the hearing.

¹⁰ [Affidavits in opposition shall be filed in the Registry not later than three months, unless further extended by the Court, for sufficient cause, from the date of service of notice of the rule *nisi*, failing which the case will be listed before the Court for orders for default. Copies of affidavit in opposition or reply shall be served on the opposite party or parties and the affidavits shall not be accepted in the Registry unless they contain an endorsement of service signed by such party or parties. Every party to the proceedings shall supply to any other party on demand copies of any affidavit filed by him.

The proposed performance will be as Annexures A & B.

ANNEXURE 'A'

IN THE HIGH COURT OF DELHI AT NEW DELHI
(SHOW CAUSE NOTICE)

Case No.

.....Appellant(s)/Petitioner(s) VsRespondent(s)

Notice to :

.....

Whereas the Appellant(s)/Petitioner(s) above named has/have presented an appeal/petition under Section (Copy enclosed), notice is hereby given to you to show cause why the appeals/petition should not be admitted.

Should you wish to urge anything in reply to Show Cause Notice, you are at liberty to do so on (actual), the date fixed before the Court, either personally or through an Advocate duly authorised by you.

Take further notice that C.M. No. has been admitted to hearing and will be listed before the Court on the aforesaid date.

Superintendent (Civil)

for Registrar

High Court of Delhi

Name.

Signature.

10. Second para of Rule 4 substituted vide Notification No. 208/DHC/Rules dated 5-8-1988. It also includes Annexures 'A' & 'B'.

Advocate for the.
Appellant(s)/Petitioner(s)
Address.

Note : This notice should be served on or before the day
of 19)

ANNEXURE 'B'

IN THE HIGH COURT OF DELHI AT NEW DELHI
(SHOW CAUSE NOTICE)

Case No.

.....Appellants(s)/Petitioner(s) Vs Respondent(s)

Notice to :

.....
.....

Take notice that the above-mentioned Appeal petition (copy whereof is annexed here with) has been admitted to hearing by this Court's order dated day of 19..... (Farzi) has been fixed for hearing of the appeal/petition and the same will be taken up by the Court on that day or any subsequent date as may be convenient to the Hon'ble Court.

If you with the defend to petition, you may cause an appearance to be entered on your behalf, either personally or through an Advocate, duly appointed by you of the purpose, within 30 days of the receipt of this Notice. In case you with to defend the petition in person, you should furnish in this Registry a local address for service of process on you.

Take further notice that C.M. No. has been admitted to hearing and will be listed before the Court on

Take further notice that if no appearance is made on your behalf the matter will be heard and decided in your absence. Superintendent
(Civil)

for Registrar

High Court of Delhi

Name.
Signature.
Advocate for the.
Appellant(s)/Petitioner(s)
Address.

Note: This notice should be served on or before the day of
19)]

5. At the hearing of rule *nisi*, if the Court is of the opinion that an opportunity be given to the

parties to establish their respective cases by leading further evidence, the Court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper.

6. Where no *ad interim relief* is granted, the rule *nisi* and the accompanying documents shall, ordinarily, be served by the petitioner on the respondent; and upon such service being effected, the petitioner shall file in the Registry an affidavit of such service. The said affidavit or service shall be filed at least 10 days before the date appointed for the hearing.

Provided that the Registrar may on the application of the petition direct the process to be served by the Court.

7. Unless otherwise ordered by the Court, every petition in which a rule *nisi* is granted shall be posted before the Court for final hearing and disposal within three months of the grant of the rule *nisi*.

Where for any reason, it is not possible to post the petition for final hearing within the period aforesaid the Registrar shall place matter before the Court for directions.

Part G

SPECIAL RULES OF PROCEDURES IN ORIGINAL CIVIL CASES

(a) Evidence

1. Record of examination of parties and evidence of witnesses—When at the first or at any subsequent hearing of a suit, any party appearing in person or person in Court, or any person able to answer any material questions relating to the suit by whom party or his pleader is accompanied, is examined by the Court, the substance of such examination shall be reduced to writing by the Judge and shall form part of the record the substance of what each witness deposes shall similarly be reduced to writing by the Judge, and shall form part of the record; provided that the Judge may, if he thinks proper direct the substance of the examination or the evidence to be recorded in shorthand by an officer of the Court or other person specially appointed for the purpose. In the latter case, the transcript of the shorthand shall be corrected and signed by the Judge and then placed on the record.

2. Conduct of trial where the Judge dies before conclusion or ceases to be attached to the Court—If the Judge who has recorded evidence or caused it to be recorded in his presence, under these rules, dies or ceases to be attached to the Court before the conclusion of the suit, the Judge before whom the suit is continued may, if he thinks fit, deal with the evidence so recorded as if it had been recorded by himself or in his presence.

(b) Judgments and Orders

3. Oral Judgments—Judgments may be written by the Judge in English or delivered orally, and in the latter case a note thereto in writing in the English Language, or Shorthand, shall be taken by an officer of the Court in attendance for the purpose. The note so taken shall be written out or typed in full by the officer by whom it was taken, and shall be submitted by him to the Judge for correction. After being corrected by the Judge, where necessary, it shall be filed as the judgment of the Court.

4. Contents of Judgment—The Judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision, when issues have been framed, the finding or decision of the Court upon each separate issue shall be stated with the reason therefore, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

5. Pronouncement of Judgment—(1) After a case has been heard judgment may be pronounced either at once or on some future date which shall be notified in the Cause List. No other notice to the parties shall be necessary.

(2) Where a case is heard by two or more Judges and judgment is reserved, their judgment or judgments may be pronounced by any one of them. If no such Judge be present such judgment or judgments may be pronounced by any other Judge.

(3) Where a case is heard by a Judge sitting alone and judgment is reserved, his judgment may, in his absence, be pronounced by any other Judge.

6. Opinion written before delivery of judgment—When a case has been heard by a Bench of the Court, the written opinions of the Judges who heard the case, but who have ceased to be attached to the Court before delivery of judgment, shall, unless delivered by another Judge of the Bench which heard the case, be deemed to be minutes merely and not judgments.

7. Death of a party before delivery of judgment—When a party to the suit dies after the last hearing but before delivery of judgment, the Court may order the judgment to bear the date of the last hearing.

8. Filing Memorandum of appeal in case of oral judgment—A memorandum of appeal in a case in which judgment has been delivered orally, shall be received and filed without a copy of the judgment.

9. Note of order passed to be kept—When an order is made in Court or in Chambers a note of its purport shall be made and signed by the Judge or Judges making the order; and if the order disposes of petition, the reasons for making it shall be stated.

10. Payment of costs to be condition precedent of permission to withdraw a suit—When a suit is allowed to be withdrawn with leave to bring a fresh suit, the order shall be drawn up so as to make the payment of the costs of the first suit a condition precedent to the plaintiff bringing a fresh suit, unless the Court or the Judge who gave permission shall otherwise direct.

Part GG

RULES OF PROCEDURE IN ELECTION PETITIONS

[*Note:* This Chapter was inserted by Punjab & Haryana High Court in 1967, so it is not applicable in Delhi. Please see 'Election Rules' made by High Court of Delhi under Chapter 7 H of this Volume].

COMMENTS

Rules made by High Court under Section 129 of C.P.C. regarding Election Petitions in the High Court cannot abrogate or curtail the mandatory requirement of the proviso to Section 119 of the Representation of People Act 1951, under which a returned candidate against whom an election costs and the High Court has no discretion in the matter. *Sagar Ram Gupta v. Banarsi Das Gupta*, AIR 1974 Punjab 330.

Part H
RULES OF PROCEDURE IN APPEALS

(a) Judgments and Orders

1. Oral and Written Judgments—Judgments may be written by the Judge in English or delivered orally, and in the latter case a note thereof in writing in the English Language or shorthand, shall be taken by an officer of the Court in attendance for the purpose. The note so taken shall be written out or typed in full by the officer by whom it was taken, and shall be submitted by him to the Judge for correction. After being corrected by the Judge, where necessary, it shall be filed as the Judgment of the Court.

2. Pronouncing Judgment—(1) After a case has been heard judgment may be pronounced either at once or on some future date which shall be notified in the Cause List. No other notice to the parties shall be necessary.

(2) Where a case is heard by two or more Judges and Judgment is reserved, their judgment or judgments may be pronounced by any one of them. If no such Judge be present such judgment or judgments may be pronounced by any other Judge.

(3) Where a case is heard by a Judge sitting alone and judgment is reserved, his judgment may in his absence, be pronounced by any other Judge.

3. Opinion recorded before delivery of Judgment—When an appeal has been heard by a Bench of the Court, the written opinions of the Judges who heard the appeal, but have ceased to be attached to the Court before delivery of judgment, shall unless delivered by another Judge of the Bench which heard the appeal, be deemed to be minutes merely and not judgments.

4. Pre-dating of judgment when party dies—When a party to the appeal dies after the last hearing, but before delivery of judgment, the Court may order the judgment to bear the date of the last hearing.

5. Reference in case of difference of opinion—When an appeal is heard by a Bench consisting of two Judges and the Judges composing the Bench differ on point of law and refer the appeal under Section 98 of the Code of Civil Procedure, the Judges so differing shall each record his judgment on the appeal, and the appeal shall thereupon be laid before the Chief Justice, who shall direct to which other Judge or other Judge the appeal shall be referred. Similarly when the Judges composing a Bench being equally divided in opinion as to the decision on a point, state that point for reference to another Judge or Judges under Clause 26 of the Letters Patent, the case shall be heard on that point by one or more Judges to be nominated by the Chief Justice. The Chief Justice may be such other Judge or one of such other Judges.

(b) Appellate Decrees

6. Decrees in English—The decree of the High Court shall be drawn up in English, and shall bear the same date as the judgment.

7. (i) Contents of decree—The decree shall contain the number of the appeal, the names and description of the appellant and respondent, the names of the plaintiff and defendant in the suit, and the description of the Court from whose decree or order the appeal is preferred, with date of such decree or order and shall clearly state the relief granted or other determination of the appeal,

in such manner as not to render the reference to other documents necessary, except the decrees of Courts below, when those decrees are affirmed or varied, but not reversed.

Note—In all important cases the Deputy Registrar, will if this, can be done without undue delay or inconvenience obtain the signature of counsel of the draft decree.

(ii) *Decree to mention cost*—The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions the same, and the costs incurred in the Courts below, shall be paid.

(iii) *Decree in pauper appeals*—In pauper appeals the provisions of Order XXXIII; Rule 10 of the Code of Civil Procedure shall be observed.

The heading of the decree should run—

“Appeal in forma pauperis by...”

In the body should be inserted —

“The following Court-fee costs are recoverable by Government as a first charge upon the subject matter, under Order XXXIII, Rule 10 of the Code of Civil Procedure.”

8. (i) *Objection to draft of decrees*—As soon as a decree has been drawn up the Deputy Registrar shall cause a notice to be exhibited on the notice board, stating that the decree has been drawn up, and that any party to the decree or any counsel of any party to the decree may within 3 days, purport the decree and sign it or file with the Deputy Registrar an objection to the decree on the ground that there is in the judgment a clerical error or omission or that the decree is not in accordance with the judgment upon which it is based. Such objection, if any shall state clearly what is the clerical error or omission alleged or in what respect the decrees is not in accordance with the judgment, and shall be signed and dated by the party or by the Advocate filing it.

(ii) *Objection to be laid before a Judge*—Should any such objection, as is mentioned in clause (i), be filed on or before the date specified in the notice, the Deputy Registrar shall, on notice to all the parties, put up the appeal or case together with the judgment therein, the draft and the decree and the objection, for orders before the Judge or Judges, or one of them, who delivered the judgment, or if such Judge or Judges has or have ceased to be a Judge or Judges of the Court or be absent on leave or furlough, then before such Judge or Judges as the Chief Justice shall appoint for that purpose.

(iii) *Cases in which decree may be signed by the Registrar*—Should no such objection, as is mentioned in clause (i), be filed on or before the date specified in the notice, the Deputy Registrar or such other officer as may be in charge of the Judicial Department for the time being having first dated the decree as of the day when the judgment upon which the decree is founded was delivered, shall sign the decree and seal it with the seal of the Court.

(iv) *Above procedure to apply to other final orders*—The above procedure shall also be observed in respect of final orders in all miscellaneous, revision or other cases.

Note—*No alteration of the decree or order*—Under no circumstances shall any decree or order passed or made by a Judge or Judges be altered, varied or departed from in any particular in the office, except under an order, in writing, of the Judge or Judges who passed or made such decree or order or except under an order made on appeal from such decree or order or except under an order made in review.

9. Decree under Order XLI, Rule 11—No decree shall be drawn up in cases in which the decision of the lower Court is confirmed under Order XLI, Rule 11 of the Code of Civil Procedure.

10. (i) Procedure for notice of parties when draft to be settled in their presence—When the draft of any decree or order has been ordered to be settled in the presence of the parties, or when none of the Judges who concurred in the judgment; continues attached to the Court and the Deputy Registrar thinks it necessary that it should be so settled, the Deputy Registrar shall, by notice in writing, which shall be accompanied by copies of the draft prepared for approval, appoint a time for setting the same, and the parties or their counsel must attend such appointment and produce before the Deputy Registrar such documents as may be necessary to enable him to settle the draft. The notice will be sent from the Deputy Registrar's office to counsel, if any, of the parties with a receipt book, in which shall be obtained the signature of the person with whom the notice is left.

(ii) Mode of service of notice—The notice shall be served on the parties who have appeared in person by the party, who has the carriage of the decree or order. When so served, the original notice, with a memorandum endorsed thereon of the service of a copy thereof signed by the party by whom such service was made, must be delivered to the Deputy Registrar who may, if not satisfied that service has been duly made, require, such service to be verified by affidavit.

11. Settlement of Draft in case parties fail to act—If any party fails to attend the Deputy Registrar's appointment for settling the draft of a decree or order or fails to produce any documents called for by the Deputy Registrar, the Deputy Registrar may proceed to settle such draft in his absence, or without the production of the documents aforesaid, or may mention the matter to the Court.

12. Adjournment of settlement of draft—The Deputy Registrar may adjourn any appointment for settling the draft of any decree or order to such time as he may think fit, and the parties who attend the appointment shall be bound to attend the adjourned appointment without further notice.

13. Right of party dissatisfied with Registrar's settlement—If any party is dissatisfied with any decree or order as settled by the Deputy Registrar and intends to mention the matter to the Court the Deputy Registrar if informed of such intention shall not proceed to complete the decree without allowing such party sufficient time to apply to the Court. The application must be made by motion, or notice to the parties who appeared at the hearing.

14. Variation of draft settled by the Registrar—When a variation is made by the Court in a draft settled by the Deputy Registrar, such variation shall be embodied in the decree or order, and except when the costs of the application are ordered to be paid, no fresh order need be drawn up.