

CHAPTER 16

Legal Practitioners

Part A

THE FILING OF POWERS OF ATTORNEY BY PLEADERS IN SUBORDINATE COURTS

1. Pleadings and acting by pleaders—Whereas by Order III, Rule 4, of the Code of Civil Procedure, no Pleader shall ‘act’ for any person in any Court unless he has been appointed by an instrument in writing nor shall any pleader, who has been engaged for the purpose of pleading only, plead on behalf of any person unless he has filed in Court a memorandum-of-appearance or unless he has been engaged by another pleader duly appointed and no such pleader can be recognised in the absence of a written authority or memorandum-of-appearance as aforesaid as empowered to plead or act for any person in any proceeding governed by the Code of Civil Procedure, and it is expedient to provide for ascertaining that every such pleader is duly authorised to appear, plead or act in any such proceedings before subordinate Courts, the following instructions have been issued by the High Court:

(1) *Power of attorney to act to be executed by the principal*—Every appointment of a pleader to act shall contain in full the name of the person, or, where there are more than one, of every person who thereby appoints the pleader to act his behalf, and shall be executed by every such person.

(2) *Proof required “when power of attorney not executed by the principal*—When such appointment or power is not executed by the principal himself, but by some person claiming to appoint or give authority on his behalf, the pleader will not be recognised by the Court without proof that such person was duly authorised by the principal to execute such appointment or power.

Comments

It is provided in this rule that when power of attorney in favour of a lawyer is not executed by the principal himself but by some person claiming to appoint or give authority on his behalf, the lawyer will not be recognised by the Court without proof that such person was duly authorised by the principal to execute such power of attorney. In the absence of a resolution of the petitioner society to appoint the Advocate, the latter could not be recognised by the trial Court as a lawyer Competent to represent the society, (1983)85 PLR 232.

(3) *Power of attorney or memorandum of appearance in cross- appeals*—In cross-appeals a pleader who has already filed a power of attorney or memorandum-of-appearance for the appellant shall not be required to file another power-of-attorney or memorandum-of-appearance for his client as respondent in the cross appeal.

(4) *Date of engagement*—The power of attorney or memorandum of appearance shall be filed in Court by the Pleader shortly after his engagement, indicating the date of his engagement.

Part B
FEES OF COUNSEL

Rules made by the High Court under the powers conferred by Section 27 of the Legal Practitioners' Act, 1879, fixing and regulating the fees payable by any party in respect of the fees of adversary's Advocate, Pleader, Vakil or Attorney, upon proceedings in Civil Courts subordinate to the High Court.

Rules

¹**[1. Suit for recovery of property, breach of contract or damages—**In suits for the recovery of money or of specific property or a share of specific property, whether immovable or moveable, or for the breach of any contract or for damages:—

(a) If the amount or value of property, debt or damages decreed shall not exceed Rs.25,000/- at 10 per cent on the amount or value decreed.

(b) If the amount of value shall exceed Rs. 25,000/- and not exceed Rs.50,000/-, on Rs.25,000/- at 10 per cent and on the remainder at 8 per cent.

(c) If the amount or value shall exceed Rs. 50,000/- and not exceed Rs. one lakh, on Rs.50,000/- as above and on the remainder at 4 per cent.

(d) If the amount or value shall exceed Rs. 1,00,000/- and not exceed Rs. 5,00,000/- on Rs.1,00,000/- as above and on the remainder at 2 per cent.

¹[(e) If the amount or value shall exceed Rs.5,00,000/-, on Rs.5,00,000/- as above and on the remainder at one per cent subject however that in no case the amount of fee shall exceed Rs.50,000/- (Rupees fifty thousand) or the actual, whichever is less, subject to the condition that a certificate of fee must be filed.]

1A. In the case of.

(i) Summary suits under Order XXXVII of the first Schedule to the Code of Civil Procedure, 1908, where the defendant does not appear or where leave to defend is refused or where a decree is passed on the defendant failing to comply with the conditions on which leave to defend was granted and appeals against decrees in suits.

(ii) Suit, the claim in which is admitted but only time or instalment for payment is asked for.

(iii) Suit which is got dismissed by a plaintiff for want of prosecution before settlement of issues or recording of any evidence, except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(iv) Suit which is withdrawn before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(v) Suit in which judgment is given on admission under Rule 6 of Order XII in the First Schedule to the Code of Civil Procedure, 1908, before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(vi) Short causes, commercial causes and long causes in which no written statement is filed and

1. Substituted for Rule 1, vide Notification No. 233/DHL/Rules dated 29.7.1989.

¹. Clause (e) substituted vide Notification No.4/Rules/DHC dated 29.1.2003

appeals from decrees in such suits.

(vii) Suits compromised before the settlement of issues or recording of evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(viii) Any formal party to a suit or appeal, *e.g.*, a trustee or estate holder who only appears to submit to the orders of the Court and asks for his costs.

(ix) A suit or appeal which has abated.

(x) A Plaint returned for presentation to the proper Court, the amount of Advocate's fees to be allowed shall be fixed by the Court disposing of the matter and shall not exceed 1/2 of that payable according to the rate specified in sub-rule (1) above:

Provided that in no case falling under this sub-rule the Advocate's fee shall be less than Rs. 500/-

IB. An advocate who has been employed by the heirs of a deceased party is not entitled to have fresh fees taxed.]

²[**2. Others Suits**—In suits for injuries to the person or character of the plaintiff, such as for assault or defamation or for injuries to the property, or to enforce rights where the pecuniary value of such injury or right cannot be exactly defined, as in suits for the partition of joint property where partition is improperly resisted or any other suit of the kinds specified in the rules made by the High Court under Section 9 of the Suits Valuation Act, 1887 for the valuation of suits which do not admit of being satisfactorily valued, if the plaintiff succeeds, the Court may order the fee allowed to the plaintiff to be calculated with reference either to the amount decreed or according to the valuation of the suit according to such a sum as the Court shall think reasonable and shall fix with reference to the importance of the subject of dispute but the same shall not be less than Rs. 500/- and shall not exceed Rs. 5,000/-.

2A. In any miscellaneous proceedings including arbitration proceedings, probate cases or cases under other statutory provisions or for any matter other than that of appearing, acting or pleading in a suit prior to decree, the fees shall not exceed:

(i) Rs. 2,000/- in the Court of District Judge or of an officer exercising the powers of a Subordinate Judge of the 1st, 2nd, 3rd and 4th class or in a Court of small causes,

(ii) Rs. 100/- in the Court of an officer exercising the power of a Subordinate Judge in respect of cases of the value of which is below Rs. 1,000/-.

2B. In execution proceedings or in appeals in execution proceedings, the advocate fee to be allowed shall be one-fourth of the fee calculated at the rates specified in Rule (1) on the amount or value of the relief or money claimed in the application to execute the decree. Such fees shall be charged only on the first application and on any subsequent contested application.]

3. Fees allowed to defendant—If the suit be dismissed for default, or upon the merits, the fee allowed to the defendant shall be calculated according to Rules 1 and 2 on the value of the suit.

4. Fees in plaintiff's case only partially decreed—In the suit shall be decreed for the plaintiff as to part only of the claim, and as to the remainder shall be dismissed, the fee allowed to each

2. Substituted for Rule 2, vide Notification No. 233/DHC/Rules dated 29.7.1989.

party shall be fixed with reference to the value of that part of the claim in respect of which he shall succeed, and shall be calculated according to Rules 1 and 2.

5. Suits for damages—If in any suit for damages the plaintiff shall succeed as to the whole of his cause of action, but shall fail to recover the full amount of damages claimed, the defendant shall not be entitled to any allowance in respect of the difference between the amount of damages claimed and the amount recovered, unless the Court shall be of opinion that the amount claimed for damages was unreasonable or excessive, and shall for that or any other-cause to be specified direct that a fee shall be allowed to the defendant.

If specially allowed, the amount of such fee shall be fixed with reference to the amount of damages disallowed to the plaintiff, and shall be calculated according to Rule 1.

6. Several defendants—If several defendants who have a joint or common interest succeed upon a joint defence or upon separate defence substantially the same, not more than one fee shall be allowed, unless the Court shall otherwise order for a reason which shall be recorded. If only one fee be allowed the Court shall so direct which of the defendants it shall be paid, or shall apportion it among the several defendants in such manner as the Court shall think fit.

7. Several defendants—If several defendants, who have separate interest set up separate distinct defences and succeed thereon, a fee for each of the defendants who shall appear by a separate counsel may be allowed, in respect of his separate interest. Such fee, allowed, shall be calculated with reference to the value of the separate interest of such defendant according to Rule 1.

8. Miscellaneous proceedings—In any miscellaneous proceedings or for any matter other than that of appearing, acting or pleading in a suit prior to decree, the fee shall not exceed.

(i) rupees two hundred and forty in the Court of a District Judge or of an officer exercising the powers of a Subordinate Judge of the 1st, 2nd, 3rd and 4th class or in a Court of Small Causes; and

(ii) rupees forty-eight in the Court of an officer exercising the powers of a Subordinate Judge in respect of cases the value of which is below Rs. 1,000.

9. Undefended suits—If a suit in any Court of original jurisdiction be undefended, the fee shall be calculated at one-half the sum at which it would have been charged had the suit been defended.

10. Review—If a review be rejected after summoning the opposite party, or if, after the admission of a review, the former judgment be upheld, the fee, if allowed to the successful party in the review, shall be fixed by the Court at an amount which shall not in any case exceed one-half of the amount allowed by these rules in case of an original decree.

11. Review—If, after the admission of a review, the former judgment be revised, the fee in respect of the review, if allowed to the part who succeeds in the review, shall not exceed one-half of the amount allowed by these rules in case of an original decree. The fee allowed in respect of the review will be irrespective of any fee which may be included in any cost in respect of the original suit, which may be adjudged to the successful party by the judgment in review.

³**[12. Appeals**—In appeals the fee shall be half of the fee calculated on the same scale as in the original suits and the principles of the above rules as to original suits shall be applied, as nearly

3. Substituted for Rule 12, vide Notification No. 233/DHC/Rules, dated 29.7.1989.

as may be.]

13. Several appellants—When the interest of several appellants is joint, not more than one fee shall be allowed, unless the Court shall otherwise order. If one fee only be allowed, the Court shall direct to which of the appellants it shall be paid, or shall apportion, it amount the several appellants in such proposition as it shall think fit.

14. Several respondents—If several respondents in one appeal appear by separate pleaders, in determining whether separate fees shall be allowed, the Court shall be guided by the principles laid down in Rules 6 and 7.

15. Discretion of Court, Remand Appeal from decree passed on remand. Issue referred for trial to lower Court—If in any instance, the payment of fees according to the proceeding rules shall not appear to the Court to be just and equitable, the Court may exercise its discretion in allowing such fee as may appear just and equitable, but in every case when a fee is allowed, the amount shall be calculated according to Rule 1, or according to Rule 8, as the case may be:

Provided that, if the decree of a lower Court be reversed on appeal and the case be remanded to the lower Court to be tried upon the merits, the lower Court, on passing its decree, allow to the successful party such a sum as the Court shall consider to be reasonable, not exceeding half the amount calculated according to Rule 1, in respect of the rehearing, in addition to the full amount calculated according to that scale:

Provided also that, if an appeal be preferred against the decree passed on remand the fee, if any, allow by the Appellate Court to the party succeeding in that appeal shall not, unless for a special reason to be recorded, be less than one-quarter, nor more than one-half, of the amount calculated at the rate mentioned in Rule 1, if by the decree of the Appellate Court reminding the case the same party shall have been allowed a full fee in respect of the former appeal in the suit, either absolutely or conditionally upon his succeeding upon the remained:

Provided also that, if an issue be framed and referred by the Appellate Court for trial by the lower Court, the Appellate Court may, if it thinks proper, allow to the party who shall succeed in the appeal such a sum as the Court shall consider reasonable, not exceeding half the amount calculated at the rate mentioned in Rule 1, in respect of the trial of the issue in the lower Court in addition to a full fee in respect of the appeal calculated at that rate.

16. Certificate as to fees to be filled by counsel in the Court of District Judges—Notwithstanding anything contained in the rules and notwithstanding any order of the Presiding Officer, no fee to any legal practitioner appearing in civil appeals, or original suits in the Court of District Judges shall except, as in these rules hereinafter provided, be allowed on taxation between party and party, or shall be included in any decree or order, unless the party claiming to have such fee allowed shall, before the final hearing, fill in the Court, a certificate signed by the legal practitioner certifying the amount of the fee or fees actually paid by or on behalf of his client to him or to any other legal practitioner in whose place he may have appeared.

Comments

Certificate of fee by counsel has to be submitted before final hearing and not before commencement of arguments. *Ishar Doss Malhotra v. Sh. Dhanwant Singh and others*, AIR 1985 Delhi 83.

17. Certificate in the Court of Sub-Judge—Notwithstanding anything contained in these rules and notwithstanding any order of the Presiding Officer no fee to any legal practitioner appearing in original suits of which the jurisdictional value is over Rs. 5,000/- (five thousand), pending in

the Courts of Subordinate Judges shall except as in these rules hereinafter provided, be allowed on taxation between party and party, or shall be included in any decree or order, unless the party claiming to have such fee allowed shall, before the commencement of the argument at the conclusion of the evidence, file in the Court a certificate signed by the legal practitioner certifying the amount of the fee or fees actually paid by or on behalf of his client to him or to any other legal practitioner in whose place he may have appeared.

Provided that in all suits of the valuation of Rs. 25,000 or above the taxing officer will allow fees on taxation to a party, when at least two counsel have filed certificates of payment of fees on its behalf.

17-A. Exemption from filing certificate in certain cases—Nothing in Rules 16 and 17 shall require filing of a certificate by a District Attorney or other Law Officer who is paid a fixed monthly salary and not a separate fee for a particular case and who appears on behalf of or under the instructions of the State Government, or union of India in the suits, appeals and other matters in which the State Government or Union of India is a party or which are decided to be conducted at State expense.

18. Contents of certificate—The certificate mentioned in Rules 16 and 17 shall state:

- (a) the appeal or suit in respect of which such fee or fees was or were paid;
- (b) the date or dates when such fee was or were actually paid to the legal practitioner engaged in the case;
- (c) the precise amount or amounts which was or were so paid;
- (d) that no portion of such fee or fees has been, or has been agreed to be, returned or remitted or appropriated to the use of any other person by the legal practitioner or by any one acting on his behalf or on behalf of any one who was associated with him in case; and
- (e) the name and address of the person who made such payment:

Provided that when a higher fee that is allowed by the scale is allowed by special order of the Court, a certificate of the payment of the additional fee at any time may be accepted, if filed before taxation, in lieu of the certificate required by these rules.

19. Form of certificate—The certificate shall so far as possible, be in the following form:

District Judge

In the Court of

Sub-Judge

A.B. (Add description and residence).....

(Plaintiff or appellant)

Versus

C.D. (Add description and residence).....

(Defendant or respondent)

For the purpose of having my fee allowed on taxation as against the party or parties, who may be liable for costs under the judgment or order of the Court, I.....in

accordance with Rule 18 of the rules regulating the fees of counsel in the Court, hereby certify that in the above case the following fees were paid to me as my exclusive fee on the dates and by the person or persons specified below, and that such fees were paid to me

before the final hearing of the appeal

before the commencement of the arguments at the conclusion of the evidence

and that no portion of such fees has been, or has been agreed to be returned or remitted or appropriated to the use of any other person by me or by any one acting on my behalf.

Matter	Fee	Date of	By whom	Address of person
payment	paid	who	actually	made
such	payment			

1 2 3 4 5

Signature.....

Date of Signature.....

Notes:—(i) In the certificates of the fees filed by legal practitioners engaged by Government in cases in which the Union of India or the State Government is a party, it is sufficient to certify that a fee has been fixed (not paid) by the Legal Remembrancer to Government, Punjab, or other appropriate authority.

(ii) The provisions of Note (i) shall apply, *mutatis mutandis*, in cases in which legal practitioners are engaged by the Custodian of Evacuee Property either in his own behalf or on behalf of the evacuees.

Part C

FEES IN DECLARATORY SUITS, ETC.

1. To be calculated on the Valuation of Suit—As some diversity of practice appears to exist in regard to the fixing of counsel's fees in declaratory suits, injunctions, etc., the Judges deem it necessary to point out that in such cases the value of the subject-matter of the suit must first be arrived at for purposes of jurisdiction in accordance with Chapter 3, "Valuation of Suits" Part A, and then counsel's fee calculated according to the scale laid down in Part B of this Chapter.

⁴**[2. To be calculated on the Valuation of Suit**—Several appeals have had to be admitted to a hearing by this Court solely on the ground that counsel's fees, which should have been fixed by rule, had been fixed at the discretion of the District Judge, at a rate higher than that allowed by the rules. Although Rules 2 and 15 of Part B of this Chapter permit District Judges to exercise their discretion in allowing fees which appear just and equitable, it must be remembered that the fee to be allowed is to be calculated in accordance with scale laid down in Rule 1 of that part, and any fee not exceeding the sum so arrived at may be allowed.

4. Rule 2 substituted vide Notification No. 223/DHC/Rules, dated 29.7.1989.

For instances:

(i) In a suit for an injunction the maximum fee which can be allowed Rs. 5,000/-.

(ii) Deleted.]