

CHAPTER II

Constitution and Powers of the Benches and Powers of the Registrar and distribution of Judicial Business.

1. A Division Court for the hearing of appeals from the decrees or orders of Subordinate Courts shall consist of two or more Judges as the Chief Justice may think fit:

(i) Provided that it shall be competent for one Judge to hear appeals and applications and Lawazimas relating thereto in all matters specified in the subjoined schedule, except where such appeals, applications or matters involve a substantial question of law as to the interpretation of the Constitution, of the Government of India Act, 1935, or any order in Council made there- under. He may, however, send any particular case, he thinks fit to be disposed of by two Judges, with his reasons for the same to the Chief Justice for his orders for being placed before a Division Bench:

(ii) Provided further that where at any stage of the hearing of an appeal, application or other matters it appears to the Judge that it involves a substantial question of law relating to the interpretation of the Government of India Act, 1935, or any order in Council made thereunder or the Indian Independence Act, the Award of the Boundary Commission, the Award of the Arbitration Tribunal, the orders made under the Indian Independence Act, or under the constitution of Pakistan or where any question of *ultra vires* of any provision or provisions in any Legislative Act arises he shall send the appeal, application or other matter to the Chief Justice for being disposed of by a Division Bench of at least two Judges:

(iii) Provided also that, on the requisition of any Division Court or whenever he thinks fit, the Chief Justice may appoint a Special Division Court, to consist of three Judges, for the hearing of any particular appeal, Rule, Revision or an Application, or any particular question of law arising in an appeal or in any other matter.

SCHEDULE

[Referred to in proviso (i) above]

(Civil Work)

(i) Application under section 25 of the Provincial Small Cause Courts Act, and Rules granted upon such applications.

(ii) Second Appeals arising out of suits up to the value of Tk.¹[4,00,000] and all applications and Rules relating thereto.

(iii) Applications for Revision under section 115, Civil Procedure Code, against all orders of Senior Assistant Judge, and against the orders of other Judges arising out of suit and for proceedings up to the value of Tk.¹[4,00,000] relating thereto.

(iv) Admission of appeal, or cross-objection, after time in matters in which, the value of the suit does not exceed Tk.¹[4,00,000]

(v) All appeals from appellate orders arising out of execution of decrees or orders, the values or amounts of which do not exceed Tk.¹[4,00,000] and which are made in suits or proceedings, the values of which do not exceed the said sum, and all Rules and all applications relating thereto.

¹ The figures "4,00,000" were substituted for the figure "1,00,000" by notification no 9-G, Bangladesh Gazette, March 30, 2006

(b) All appeals from original orders made by the lower appellate Courts in appeals arising out of suits or proceedings the values of which do not exceed Tk. ¹[4,00,000] and the decrees passed wherein do not exceed Tk. ¹[4,00,000] in amount and all Rules and all applications relating thereto.

(c) All appeals against orders made in Insolvency proceedings in cases where the property of the insolvent does not exceed Tk. ¹[4,00,000] in value and all Rules and applications relating thereto.

(vi) Civil Appeals not exceeding Tk. ¹[4,00,000] in value under Order XLI, Rule 11, of the Code of Civil Procedure.

Note.---Every memorandum of appeal from orders and every Application for revision should state the value of the suit from which it arises.

2. In addition to the powers conferred upon him by other rules the Registrar shall have the following duties and powers in relation to Civil and Criminal matters:-

- (I) To receive an appeal under clause 15 of the Letters Patent from the Judgment of a Division Court, and to issue notices as soon as the appeal is registered.
- (II) To receive an appeal under clause 15 of the Letters Patent from the judgment of a Judge sitting singly, and to issue notices as soon as the appeal is registered to all the respondents and to post it for hearing.
- (III) To receive an appeal from the decree or order of a subordinate Civil Court, and in the case of Second Appeals and Appeals from Orders, other than those under the Workmen's Compensation Act if in order, to post them in the list of hearing under Order XLI, Rule 11 of the Code of Civil Procedure and, in the case of Appeals from Original Decrees or Orders under the Workmen's Compensation Act to issue notices as soon as the Appeal is registered.
- (IV) To dispose of all matters relating to Court-fees (other than appeals subject matter of which is the amount of Court-fee payable) and to the service of notices or other processes: Provided that all Rules, in which there has been default in paying process fees within the time allowed in Rule 13, Chapter IV of these rules, shall be laid before the Bench which issued them, or if the Judges composing that Bench are no longer sitting together, before the senior of the two Judges and in his absence before the junior, to be dealt with by that Judge and the Judge who happens to be sitting with him.

In the event of both Judges who issued the Rule being absent or otherwise unable to deal with it, the Rule shall be laid before the Division Bench taking Lawazima matters.

A Rule issued by a Judge sitting singly in which there is default in paying process fees, shall be laid before the Judge, who issued the Rule and if he is not sitting singly it shall be laid before some other Judge sitting singly.

- (V) To dispose of all matters relating (i) to the substitution of the heirs of parties, provided no question of limitation arises; (ii) to the representation of minor parties when there is no dispute as to

¹ The figures "4,00,000" were substituted for the figure "1,00,000" by notification no 9-G, Bangladesh Gazette, March 30, 2006

the guardianship and (iii) applications under Order XXII, rule 10, Civil Procedure Code, to record an assignment, creation or the devolution of an interest during the pendency of an appeal: provided that such assignment, creation or the devolution is not disputed, and where such assignment, creation or devolution has taken place within three years as provided for in Article 181 of the Limitation Act.

(VI) To dispose of all matters relating to the appointment, removal or discharge of next friends or guardians *ad-litem* of minors or persons of unsound mind:

Provided that next friends of guardians *ad-litem*, as the case may be shall not be removed except on stamped application supported by an affidavit and on notices to the persons sought to be removed, and also with notice to such party or parties as the Registrar in his discretion directs.

(VII) To require any memorandum of appeal, petition, application or other proceeding presented to the Court or to the Registrar to be amended in accordance with the procedure or practice of the Court.

(VIII) To call for records from subordinate Courts.

(IX) To dispose of requisitions by subordinate Courts for records and documents.

(X) To receive and dispose of an application for the return of a document.

(XI) To require any person or party to file an Affidavit with respect to any application or matter in respect of which he has power to exercise any discretion or to make any order.

(XII) To stop at his discretion the issue of all or any papers to any person who has failed to pay any fee or charges due to the Court.

(XIII) To dispose of all applications for copies of records, whether presented by parties or persons who are not parties to the proceedings to which such records relate.

(XIV) To decide the question of the necessity for transcribing and printing any accounts, not specifically applied for by the parties to an Appeal to the Supreme Court.

(XV) To call for a further deposit where the deposit already made by the appellant in an Appeal to the Supreme Court is not sufficient to defray the cost of preparing the record, and to fix the time within which such further deposit shall be made.

(XVI) To order payment of the interest accruing on Government Promissory Notes or other securities bearing interest deposited under Order XLV, Rule 7, Civil Procedure Code, and to order the refund of any unexpended balance under Order XLV, Rule 12 of the Code.

(XVII) To dispose of all Lawazima reports relating to the preparation of paper-books, and to hear all applications in any of the above matters.

(XVIII) To deal with and hear applications to dispense with more than one copy of the judgment under Order XLI, Rule 1 of the Civil Procedure Code and Chapters V and VI, Rules 4 and 19 respectively of these Rules; and to direct analogous hearing of appeals.

(XIX) Subject to the provisions of Rule 60, Chapter V of these Rules to deal with an application to the effect that a case be not placed on the Daily List for a particular day or days; provided that where a case is on the Daily List any application for its removal from that list shall be made to the Court and not to the Registrar.

When, however, an application has to be made to remove a case from the Daily List of a Bench which is not sitting on the day when the application has to be made or on a day when that list is not being taken, such applications shall be made to the Registrar

(XX) To deal with all matters relating to the service, non-service and defect of service of the Court's notices in criminal cases.

(XXI) To deal with all matters relating to the substitution of legal heirs of deceased parties in all criminal cases wherein such substitution may be necessary.

(XXII) To deal with all defects in Vokatnamas in Civil and Criminal cases.

(XXIII) To deal with applications for copies in criminal cases, where such copies are not ordinarily granted without the permission of the Court.

(XXIV) To deal with, and dispose of, all petitions of appeals in criminal cases wherein appeals may not be preferred to this Court.

(XXV) To record an order of abatement of all appeals, rules, revisions and applications after the expiry of the statutory period, provided that he shall not be entitled to entertain applications of parties for the revival or for the setting aside of abatement of any appeal or other proceeding.

(XXVI) To deal with and pass orders on matters referred to in Order XLI, Rule 14(3) of the Civil Procedure Code.

2A. Nothing in Rule 2 shall be deemed to authorise the Registrar to make an order of dismissal of an appeal for default or for any reason or to determine disputed questions of representation under Order XXII, Rule 5, Civil Procedure Code, or to pass final orders on contested applications for the appointment and removal of next friends and guardians *ad-litem* or on contested applications under Order XXII, Rule 10, C.P .C.

2B. The Registrar may delegate to the Deputy Registrar or to an Assistant Registrar any function with which he is vested under Chapters IV and V and VIII to XIII except those referred to in clauses (IV) to (VII), (X), (XI), (XIV) to (XXI), (XXV) and (XXVI) of Rule 2 above. He may also refer any matter under Rule 2 to the Court for orders.

2C. All orders made by the Registrar under these rules shall be appealable with a fixed Court-fee of Rs.3 and shall be heard by an appropriate Lawazima Bench.

3. Applications entertainable by the Registrar shall be presented to him and not to the Bench. All such applications shall be made in writing, on paper of foolscap size with a margin of 2 inches, and shall, if not typewritten, be legibly written.

4. In the absence of the Registrar, or whenever the Chief Justice so directs, his powers and duties under clauses (IV) to (VII), (X), (XI), (XIV) to (XXI), (XXV and XXVI) of Rule 2 of this Chapter shall be performed by a Judge or Judges, and the powers which he is authorised to delegate shall be performed by the Deputy Registrar or other officers of the Court.

Note.--Whenever the words "Deputy Registrar" occur in any of the High Court Rules they shall be held to include the Deputy Registrar and any other officer of the Court to whom the Registrar may have delegated the authority to exercise the function mentioned in the Rule.

5. (a) A Division Court for the hearing of an appeal under clause 15 of the Letters Patent from the Judgment of a Judge sitting singly on the Appellate Side, who has decided an appeal under the 1st proviso of Rule 1 of this Chapter, shall consist of two Judges, other than the Judge from whose judgment the appeal is preferred.

(b) In all other cases, a Division Court for the hearing of appeals under clause 15 of the Letters Patent from the judgment of a Division Court sitting on the Appellate Side of the High Court shall consist of three or more Judges as the Chief Justice may think fit, other than the Judges of the Division Court from whose judgment the appeal is preferred.

(c) A Division Court for the hearing of appeals under clause 15. of the Letters Patent from the judgment of a Judge sitting on the Original Side of the High Court, shall consist of two or more Judges as the Chief Justice may determine.

6. A reference from a Civil Court shall first be placed before the Chief Justice for orders and if it appears to him that it is in order then it shall be heard by the Division Court appointed for the hearing of appeals from decrees and orders of the Civil Court.

7. A Division Court for the hearing of cases on appeal, reference, or revision in respect of the sentence or order of any Criminal Court shall consist of two or more Judges:

Provided that a single Judge may hear any appeal, reference or application for revision other than the following:

- (i) One relating to an order of sentence of death, transportation, penal servitude, forfeiture of property or of imprisonment exceeding ¹[four years];
- (ii) A case submitted under section 307 of the Code of Criminal Procedure;
- (iii) An appeal under section 476B of the said Code;
- (iv) An application for transfer under section 526 of the said Code;

¹ The words "four years" were substituted for the words "two years" by notification no. 5181-G, Bangladesh Gazette (Extraordinary) November 19, 1977

- (v) One relating to an order for execution of a bond; where the person required to execute the bond has gone to prison in default of execution:

Provided further that such Judge may send back any particular case he thinks fit to the Bench taking criminal cases to be disposed of by two Judges giving his reasons therefor.

- (vi) ¹[An appeal under section 417 Cr. P.C. against an order of acquittal ²[or under Section 23A of the Foreign Exchange Regulation Act against an order of acquittal or discharge], in cases involving offences punishable with sentence of imprisonment exceeding one year.
- (vii) An application for revision under section 439 Cr. P.C. against an order of acquittal in cases involving offences punishable with sentence of imprisonment exceeding one year.]
- (viii) ³[An application for quashing a proceeding pending before a subordinate court;
- (ix) An application for bail under section 498 of the Code of Criminal Procedure.]

8. A Division Court for the hearing of applications relating to, or arising out of, proceedings in any Subordinate Court (Civil, Criminal or Revenue) under section 195 or section 476, Criminal Procedure Code, shall consist of two Judges.

9. (1) Whenever the Court shall be of opinion that there are reasonable grounds for holding that any Pleader or Mukhtar has been guilty of any misconduct rendering such Pleader or Mukhtar liable to be dealt with under the provisions of the Legal Practitioners Act, XVIII of 1879, the Court may institute a proceeding by the issue of a Rule calling on such Pleader or Mukhtar to show cause why he should not be so dealt with.

(2) Any proceeding taken in the High Court against any Pleader or Mukhtar under the provisions of sections 12 and 13 of the Legal Practitioners Act, XVIII of 1879, as amended by Act IX of 1884 and XI of 1896, and any report made against any Pleader or Mukhtar to the High Court under the provisions of section 14 of the same Act by the presiding Officer of any Subordinate Court, or of any Revenue office, in which the Pleader or Mukhtar is practicing, shall, subject to any direction by the Chief Justice be taken before, or considered by, the Division Bench of the High Court and such Division Bench shall also have power to call for any record under the provisions of section 14 of the same Act and to pass orders thereon.

(3) The Senior Government Pleader or the Assistant Government Pleader may, at the discretion of the Judges of the Bench, be desired to appear in, or to conduct, any proceeding taken before them under the Legal Practitioners Act.

10. A Division Court for the decision of any question reserved or referred under section 434, Criminal Procedure Code, shall consist of such number of Judges as the Chief Justice shall, in each case, determine.

11. A Full Bench appointed for any of the purposes mentioned in Chapter VII, Rules 1 to 5, or for any application, petition, suit, appeal or reference directed by the Chief Justice to be heard by a Full Bench or any matter or application coming before the Court on a certificate

¹ Clauses (vi) and (vii) were added by notification no- 1963-G, Dacca Gazette, May 1, 1961.

² Inserted by notification no. 2943-G dated June 14, 1965 (File No. 4R-8/64).

³ Clauses (viii) and (ix) were added by Notification No. 2943-G dated June 14, 1965 (File No. 4R-8/64).

given by the Advocate-General under clause 26 of the Letters Patent, shall be a Bench of any number not less than three of the Judges for the time being present as Judges of the Court.

12. The business of the Supreme Court Section on the Appellate Side of the High Court and references under the Income Tax Act, Agricultural Income Tax Act, Sales Act and the Stamp Act shall be laid before the Division Court presided over by the Chief Justice or such other Bench as the Chief Justice may direct.

13. Every petition under Order XLV, Rule 2, Civil Procedure code, in respect of any decree passed by this Court, in its Appellate Jurisdiction in the case of an appeal from the Original Jurisdiction, shall be presented to the Division Court for the hearing of appeals from the Original Jurisdiction, but every such petition may be heard by a Division Court consisting of two Judges.

14. (a) The time within which a decree of a District Court may not, under section 17 of the Divorce Act, be confirmed shall be six months from the pronouncing thereof.

(b) Rules 3, 4 and 5 of Order 46, Civil Procedure Code, shall apply to References under section 9 of the Divorce Act, and the practice and procedure for the setting down of such References for hearing shall be the same as obtain in the case of References made under section 113 and Orders 46 of the said Code, provided always that every such Reference shall be laid before the Chief Justice for his direction as to the Bench by whom it shall be heard.

15. The Civil business of the Court shall be laid before the Court or the Division Court appointed by the Chief Justice to deal with such business:

Provided that when an order under Order XLI, Rule 25 or 28, Civil Procedure Code, has been passed by a Division Court, and at the time of the receipt of the return of such order, the Judges composing such Court are not taking such appeal, the matter shall be laid before the Senior, or in his absence the Junior of such Judges, and he shall direct either that the appeal be heard by the Division Court on which he may be sitting, or that it be laid before the Chief Justice for the appointment of a Court to hear such appeal. In the absence of both of the Judges, the appeal shall be laid before the Chief Justice for orders for being placed before any Court as he deems fit.

16. The Judges of each Division Court and the Judge of each Court shall determine the order in which each description of business shall be heard.

17. Every case in the Criminal Jurisdiction of the High Court shall be placed on the List of the Division Court or a Judge appointed for that purpose on the date fixed for hearing.

18. The Court may direct notice to be given to the Government Pleader in all matters of Court-fees before it and the Government Pleader may appear and take part in the proceedings.

19. (i) The Court may direct notice to be given to the Advocate-General in all matters of a constitutional nature coming before it and the Advocate-General may appear and take part in it.

(ii) The Advocate-General may apply to be heard in any such proceedings before the Court, and the Court may, if, in its opinion, the justice of the case so requires, permit him to appear and be heard, subject to such terms as to costs or otherwise as the Court may think fit.