

UNIT – 1

THE SUPREME COURT RULES, 1966

In exercise of the powers conferred by Article 145 of the Constitution, and all other powers enabling it in this behalf, the Supreme Court hereby makes, with the approval of the President, the following rules, namely "THE SUPREME COURT RULES, 1966". These rules may be cited as the Supreme Court Rules, 1966.

Order I

Important Definitions (2):

2. (a) 'advocate' means a person whose name is entered on the roll of advocates prepared and maintained by a State Bar Council under the Advocates Act, 1961 (25 of 1961).

2. (b) 'advocate on record' means an advocate who is entitled under these rules to act as well as to plead for a party in the Court.

2. (k) 'judgment' includes decree, order, sentence or determination of any Court, Tribunal, Judge or Judicial Officer.

(2) (q) 'Senior advocate' means any advocate so designated under subsection (2) of section 16 of the Advocates Act, 1961 (25 of 1961), and all such advocates whose names were borne on the roll of the senior advocates of the Court immediately before the commencement of Chapter III of the Advocates Act, 1961.

ORDER X

DOCUMENTS

- 1.** The officers of the Court shall not receive any pleading, petition, affidavit or other document, except original exhibits and certified copies of public documents, unless it is fairly and legibly written, type-written or lithographed in double-line spacing, on one side of standard petition paper, demy-foolscape size, 1[or of the size of 29.7 cm x 21 cm], or paper which is ordinarily used in the High

Courts for the purpose. Copies filed for the use of the Courts shall be neat and legible, and shall be certified to be true copies by the advocate on record, or by the party in person, as the case may be.

2. No document in language other than English shall be used for the purpose of any proceedings before the Court, unless it is accompanied by:

(a) a translation agreed to by both parties; or

(b) a translation certified to be true translation by a translator appointed by the Court; or

(c) the said document is translated by a translator appointed or approved by the Court.

Explanation: The provisions of this rule shall, so far as may be, apply also to a document in English of which a part is in a language other than English.

3. Every document required to be translated shall be translated by a translator appointed or approved by the Court:

Provided that a translation agreed to by both parties, or certified to be a true translation by the translator appointed or approved by the Court, may be accepted.

4. Every translator shall, before acting, make an oath or affirmation that he will translate correctly and accurately all documents given to him for translation.

5. All complaints, petitions, applications and other documents shall be presented by the plaintiff, petitioner, applicant, appellant, defendant or respondent in person or by his duly authorised agent or by an advocate on record duly appointed by him for the purpose:

Provided that a party, who had been adjudged to be an indigent person for the purpose of the proceedings in the courts below, may present the document before the Judicial authority of the place where the said party resides, and the said Judicial authority after attesting the document and endorsing thereon under his seal and signature the date of presentation, shall transmit the same to the Court by registered post, acknowledgement due at the expense of the party concerned. The date of

presentation in this Court of the said document shall be deemed to be the date endorsed thereon by the said Judicial authority.

- 6.** (1) All complaints, petitions, appeals or other documents shall be presented at the filing counter and shall, wherever necessary, be accompanied by the documents required under the rules of the Court to be filed along with the said complaint, petition, or appeal.

Provided that a complaint, petition or appeal not presented at the filing counter by the petitioner or by his duly authorised Advocate-on-Record shall not ordinarily be accepted, unless as directed by the Chief Justice of India or a Judge nominated by the Chief Justice of India for this purpose.

(2) On receipt of the document, the officer in-charge of the filing counter shall endorse on the document the date of receipt and enter the particulars of the said document in the register of daily filing and cause it to be sent to the department concerned for examination. If, on a scrutiny the document is found in order, it shall be duly registered and given a serial number of registration.

(3) Where a document is found to be defective, the said document shall, after notice to the party filing the same, be placed before the Registrar. The Registrar may, by an order in writing, decline to receive the document if, in his opinion, the mandatory requirements of the rules are not satisfied. Where, however, the defect noticed is formal, the Registrar may allow the party to rectify the same in his presence; but, in other cases, he may require the party to obtain an order from the Court permitting the party to rectify the same and for this purpose may allow to the party concerned, such time as may be necessary but not exceeding twenty eight days in aggregate.

(4) Where the party fails to take any steps for the removal of the defect within the time fixed for the same by the Registrar, the Registrar may, for reasons to be recorded in writing, decline to register the document.

(5) Any party aggrieved by any order made by the Registrar under this Rule may, within fifteen days of the making of such order, appeal against it to the Judge in Chambers.

7. The Registrar may on an application by the party interested, order the return of a document filed in a suit, appeal or matter if the person applying there for delivers in the office a certified copy thereof to be substituted for the original.

8. (1) Except as otherwise provided by these rules or by any law for the time being in force, the Court-fees set out in the Third Schedule to these Rules shall be payable on the documents mentioned therein, and no document chargeable with a fee under the said Schedule shall be received or filed in the Registry unless the fee prescribed has been paid on it. No copy of a document shall be furnished to any person unless the fee prescribed there for has been paid.

Provided, however, that no Court fees or process fee or copying fee shall be chargeable in respect of matters filed in this Court through the Supreme Court Legal Services Committee.

(2) All fees referred to in sub-rule (1) shall be collected in Court fee stamp sold in Delhi in accordance with the provisions of the Court-Fees Act as in force in the Union Territory of Delhi.

(3) No document chargeable with a Court-fee shall be acted upon in any proceedings in this Court until the stamp thereon has been cancelled. The officer receiving the document shall forthwith effect such cancellation by punching out the figure head so as to leave the amount designated on the stamp untouched and the part removed by punching shall be burnt or otherwise destroyed.

(4) Whenever a question of the proper amount of the Court-fees payable is raised, the Registrar or the Taxing Officer of the Court shall decide such question before the document or the proceeding is acted upon in the Registry and whenever it is found that due to a bona fide mistake the Court-fee paid is insufficient the Registrar shall call upon the party concerned to make good the deficiency within such time as the Registrar may think reasonable but not exceeding three months in any case.

(5) In case the deficiency in the Court-fee is made good within the time allowed, the date of the institution of the proceeding shall be deemed to be the date on which the proceeding was initially instituted.

(6) The Registrar may in a proper case on an application made by the party issue a certificate regarding any excess Court-fee paid under a mistake.

9. (1) The levy and collection of Court-fees under these rules shall be under the general superintendence of the Registrar of the Court who may be assisted in his supervision by the Assistant Registrars of the Court.

(2) Where at any time during the course of the pendency of a suit, appeal or proceedings, or even after the conclusion of such a proceeding it appears to the Registrar or the Taxing Officer that through mistake or inadvertence, a document which ought to be stamped in a certain manner has been received and acted upon without its being stamped or that the Court-fee paid thereon initially was insufficient, the Registrar or the Taxing Officer shall record a declaration to that effect and determine the amount of deficiency in Court fee:

Provided that no such declaration shall be made until the party liable to pay the Court-fee has had an opportunity of being heard.

(3) When a declaration has been recorded under sub-rule (2) and if that relates to a matter pending before the Court the procedure prescribed by sub-rule (3) shall be followed; if it relates to the proceedings which have already been disposed of the Registrar shall, if the deficiency is not made good within three months of the declaration made, forward a requisition for the recovery of the same to the Central Government which shall recover the amount of such Court-fee from the person liable to pay the same as if it were an arrear of land revenue.

SPECIAL LEAVE PETITIONS:

Special Leave Petitions (SLP) in India holds a prime place in the Judiciary of India, and has been provided as a "residual power" in the hands of Supreme Court of India to be exercised only in cases when any substantial question of law is involved, or gross injustice has been done.

The Constitution of India under Article 136 vests the Supreme Court of India with a special power to grant special leave, to appeal against any

judgment or order or decree in any matter or cause, passed or made by any Court/tribunal in the territory of India.

This is special power, bestowed upon the Supreme Court of India which is the Apex Court of the country, to grant leave to appeal against any judgment in case any substantial constitutional question of law is involved, or gross injustice has been done.

"Special leave petition or SLP hold a prime place in the Indian judicial system. It provides the aggrieved party a special permission to be heard in Apex court in appeal against any judgment or order of any Court/tribunal in the territory of India.

Special Leave petition or SLP can be presented under following circumstance:

- SLP can be filed against any judgment or decree or order of any High Court /tribunal in the territory of India.
- Or, SLP can be filed in case the High court refuses to grant the certificate of fitness for appeal to Supreme Court of India.

Time frame within which SLP can be filed:

- SLP can be filed against any judgment of High Court within 90 days from the date of judgement.
- Or SLP can be filed within 60 days against the order of the High Court refusing to grant the certificate of fitness for appeal to Supreme Court.

Who can file SLP:

Any aggrieved party can file SLP against the judgment or order of refusal of grant of certificate.

Contents of SLP:

This petition is required to state all the facts that are necessary to enable the court to determine whether SLP ought to be granted or not. It is required to be signed by Advocate on record. The petition should also

contain statement that the petitioner has not filed any other petition in the High court.

It should be accompanied by a certified copy of judgement appealed against and an affidavit by the petitioner verifying the same and should also be accompanied by all the documents that formed part of pleading in Lower court.

The scope of power vested with the Supreme Court of India under Article 136:

The constitution of India vest "discretionary power" in the Supreme Court of India. The Supreme Court of India may in its discretion be able to grant special leave to appeal from any judgment or decree or order in any matter or cause made or passed by any Court/tribunal in the territory of India. The Supreme Court of India may also refuse to grant the leave to appeal by exercising its discretion.

An aggrieved party from the judgment or decree of high court cannot claim special leave to appeal as a right but it is privilege which the Supreme Court of India is vested with and this leave to appeal can be granted by it only.

An aggrieved party can approach the Apex Court under Article 136 in case any constitutional or legal issue exists and which can be clarified by the Supreme Court of India. This can be heard as civil or Criminal appeal as the case may be.

THE SUPREME COURT RULES, 1966
1[NO. 28
IN THE SUPREME COURT OF INDIA
[Order XVI, rule 4(1)(a)]
CIVIL APPELLATE JURISDICTION
SPECIALLEAVE PETITION
(Under Article 136 of the Constitution of India)

S.L.P. (Civil) No..... of.....

BETWEEN

Position of parties

	In the Court / Tribunal from whose Order the petition arises	In this Court
(A) (Here insert the name /names of the petitioner	Petitioner / Respondent/ Appellant	Petitioner
(B)		
(C)		
AND		
(D) (Here insert the name/ names of the Respondent	Petitioner/ Respondent/ Appellant	Respondent
(E)		
(F)		

To

Hon'ble the Chief Justice of India and His Companion Judges of the
Supreme Court of India.

The Special Leave Petition of the Petitioner most respectfully showeth:

1. The petitioner / petitioners above named respectfully submits this
petition seeking special leave to appeal against the judgment/order of
(Here specify the Court / Tribunal against whose order the leave to appeal
is sought for together with number of the case, date of the order and

nature of the order such as allowing or dismissing the matter or granting or refusing the interim order, etc.)

2. QUESTIONS OF LAW:

The following questions of the law arise for consideration by this Hon'ble Court:

(Here set out the questions of law arising for consideration precisely)

3. DECLARATION IN TERMS OF RULE 4(2):

The petitioner states that no other petition seeking leave to appeal has been filed by him against the impugned judgment and order.

4. DECLARATION IN TERMS OF RULE 6:

The petitioner states that no other petition SLP are true copies of the pleadings/documents which formed part of the records of the case in the Court / Tribunal below against whose order the leave to appeal is sought for in this petition.

5. GROUNDS:

Leave to appeal is sought for on the following grounds.

(Here specify the grounds precisely and clearly)

6. GROUNDS FOR INTERIM RELIEF:

(Here specify briefly the grounds on which interim relief is sought for)

7. MAIN PRAYER:

(Here set out the main prayer)

8. INTERIM RELIEF:

(Here set out the interim prayer)

Place: Advocate for the petitioner

Date:

Settled by:

(Specify the name of the Advocate in case where the petition is settled by an advocate).

JAMMU AND KASHMIR HIGH COURT RULES, 1999

In exercise of the powers conferred by section 102 of the Constitution of Jammu and Kashmir read with section 67 of the Jammu and Kashmir

Constitution Act, 1996 (XIV of 1996), section 122 of the Code of Civil Procedure, Samvat 1977 (X of 1977), section 8 of the Jammu and Kashmir State Civil Courts Act, Samvat 1977 and Clause 26 of the Letters Patent (Jammu and Kashmir) and all other powers enabling it in this behalf, the High Court of Jammu and Kashmir with the previous approval of the Governor, has made the rules.

These rules may be called the Jammu and Kashmir High Court Rules, 1999. These rules are treated as special laws and can be enforced," They shall apply to all proceedings and matters in the High Court commenced on and after the said date and shall also apply as far as may be practicable, to all proceedings taken on and after the said date in all cases and matters then pending in the High Court.

OFFICERS OF THE COURT

Rule 14 provides that the Registrar shall have the custody of the records of the Court and shall exercise other functions as are assigned to him by these Rules or may be assigned to him by the Chief Justice.

Rule 15 - Powers and functions of the Registrar:

Powers of the Registrar - The powers of the Court in relation to the following matters under its original and extraordinary jurisdiction may be exercised by the Registrar:

A. Judicial:

(a) Civil:

- i. To receive plaint, petition, appeal or any other application, issue notice or fix date for the filing of the written statement, or objections, Counter etc. in a proceeding under the original or extraordinary jurisdiction of the Court or as may be directed by the Court;
- ii. To transfer all suits for recovery of money to the competent subordinate courts;

- iii. Applications to amend the plaint, petition or subsequent proceedings where the amendment sought is formal. Where the plaint, petition or subsequent proceedings have not been placed before the court the Registrar may entertain and dispose of application for all types of amendments;
- iv. Applications for issuance of commissions to examine witnesses;
- v. Attachment of property of absconding witnesses;
- vi. Applications for leave of the Court to file a plaint when such leave is necessary;
- vii. Applications under Order 1 Rule 8 (i) of the Code for leave to sue or defend on behalf of or for the "benefit of all having the same interest;
- viii. Applications for the admission or appointment of a next friend or guardian ad-litem of a minor or a person of unsound mind or next friends or guardians ad-litem;
- ix. Applications for fresh summons or notice and for short date summons and notice;
- x. Applications for orders regarding issue of summons or notices and regarding service thereof;
- xi. Applications for orders for substituted service or summons or notice;
- xii. Applications for transmission of process for service to another court;
- xiii. Applications for permission to withdraw any suit, petition or an application except public interest litigation;
- xiv. Application for leave to file further or additional written statements, objections, counter etc.;
- xv. Applications for return of documents under O. XIII Rule 9 (i) of the Code; and applications for return of exhibits;
- xvi. Applications for "orders for discovery and for orders concerning admission, production and inspection of documents;

- xvii. Applications for leave to deliver interrogatories; ,
- xviii. Applications for orders for the transmission of a decree with prescribed certificate, etc.;
- xix. Applications for the execution of a document or for the endorsement of a negotiable instrument under O. XXI Rule 34 of the Code;
- xx. Applications for examination of judgement debtors as to his property under O.XX. Rule 41 of the Code;
- xxi. Applications for discharge from custody for the non-payment of subsistence money;
- xxii. Applications falling under section 152 of the Code;
- xxiii. Application for leave under O. XXI, Rule 50, sub-rule (2) of the Code, except where liability is disputed;
- xxiv. Applications for the issue of proclamations of sale under rule 66 and for direction as to the publication thereof under Rule 67 of O.XXI of the Code;
- xxv. Applications for possession under O. XXI Rules 95 and 96 of the Code;
- xxvi. Applications for special direction to the officer concerned as to the service or execution of any process of the Court;
- xxvii. Applications for orders for withdrawal of attachment or for return of a warrant;
- xxviii. Applications for orders for payment of money realised in execution or otherwise deposited in court including uncontested applications to share the assets realised under section 73 of the Code;
- xxix. Summoning witnesses and taking proceedings against them for failure to comply therewith as provided in Order 16 of the Code;
- xxx. Applications for extension of time under O. XXVII Rule 7 of the Code or by a party in default for further time to file written statement or affidavit or documents;

- xxxi. Applications for statement of names and disclosures of partners addresses and residence under O. XXX Rule 1 and 2 of the Code;
- xxxii. Applications for orders requiring a party to a suit or matter to produce and leave with the Registrar any document not in the English language in his possession for the purpose of being officially transplanted;
- xxxiii. Applications for orders for the production of records or documents, or accounts filed in such records before any other court;
- xxxiv. Applications for the issue of a precept to another court for the production of a record of such court or of notice of summons to a public record or register;
- xxxv. Applications to send decree and orders passed in the court in exercise of its original ordinary jurisdiction to other court for execution;
- xxxvi. Applications for production, inspection of a will or a copy thereof;
- xxxvii. Applications under order XXII of the Code for bringing on record the legal representatives of a deceased party:

Provided that no order of substitution or reviver shall be made by Registrar:-

(i) where a question arises as to whether any person is or is not a legal representative of the deceased party; or

(ii) whether a question of setting aside the abetment of the cause is involved in such case the Registrar shall after making an enquiry place the matter with his report and the findings before the appropriate Bench of the Court;

- xxxviii. Applications for enlargement or abridgment of time except where time is fixed by the Court;
- xxxix. Applications for confirmation of sale and certificate of sale to purchaser of immovable property;

- xl. Other interlocutory applications directed by the Judge hearing the case to be placed for disposal before the Registrar, and such other applications as by these Rules directed to be so disposed of, but not included in this Rule;
- xli. Applications for particulars;
- xlii. Applications for further and better statement of particulars under Rule 5 of Order VI of the Code;
- xliii. Applications for better statement of claim or defence;
- xliv. Any matter which in accordance with orders or directions issued by the Court is required to be dealt with by the Registrar.

(b) Criminal:

- i. Power to sign complaints under the proviso to section 476(1) of the Code;
- ii. To issue notice to parties in criminal reference.

(c) Appellate:

- i. To issue notices on an application for probate or Letters of Administration or for revocation of the same;
- ii. To dispose of all matters relating to the service of notices, or other processes¹including substituted service, except the powers to dispense with service on proforma respondents;
- iii. To appoint or discharge a next friend or guardian ad-litem of a minor or person of unsound mind except in case under appeal to the Supreme Court and to amend the record accordingly;
- iv. To receive and dispose of an application under Order XXII Rules 2, 3 and 10 of the Code of Civil Procedure, and to amend the record, if necessary, except in cases under appeal to the Supreme Court;
- v. To receive and dispose of an application under Order XLI Rule 10 of the Code of Civil Procedure;

- vi. To receive an application under Order XLV Rule 16 of the Code of Civil Procedure and to issue notice thereon;
- vii. 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;
- viii. To call for a further deposit when 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;
- ix. To order payment of the interest accruing on Government Promissory Notes deposited under Order XLV Rule 7 of the Code of Civil Procedure and to order to refund of any unexpanded balance under Order XLV Rule 13;
- x. To grant time for making up deficiency in court fees in cases referred to him as Taxing Officer under section 5 of the Court Fees Act. No application for extension of the time will be refused without the orders of the Court:

Provided that the Registrar may refer any matter under this rule to the Court for orders.

B. ADMINISTRATIVE:

- 1.** To sign all routine letters, conveying orders passed and asking for information's required to complete cases for submission to the Chief Justice provided that matters of urgent nature shall be brought to the notice of the chief justice;
- 2.** To sign all pay, travelling allowance and contingent bills of office establishment and to pass orders for r contingent expenses within the limit of - 5000/-;
- 3.** To prepare the agenda for the Meeting of the Judges as directed by Chief Justice and record the proceedings of such meeting;
- 4.** To scrutinize the preparation of record for the Supreme Court;
- 5.** To prepare the budget; and

6. To sanction advances from G. P. Fund in the case of Non-gazetted staff of the Court.

Rule 16 provides that all applications except those in which urgent ex parte orders are sought, will be placed before the Registrar in the first instance. He will dispose of such of them as he is empowered to do and as regards the rest may call for replies and rejoinders and take such other steps as are necessary to make them ready for hearing, before listing them before the Court.

Rule 17 provides that an appeal against the Registrar's orders Any person aggrieved by any order made by the Registrar under Rule 15 may within 15 days of the making of such order, appeal against it to the appropriate Bench. The appeal shall be in the form of a petition bearing court fee stamp of the value of Rs. 5/-.

Rule 18 provides that the Registrar shall be deemed to be performing judicial or quasi-judicial function within the meaning of section 128 (2) (i) of the Code of Civil Procedure when exercising powers referred to in rule 15(A) above and the proceedings shall be subject to revision by a Single Judge on the motion of the party aggrieved.

Rule 19 provides that the Registrar may exercise all the powers of a Court under section 151 of the Civil Procedure Code in respect of his own judicial or quasi-judicial orders.

Rule 20 Delegation of the Registrar's powers:

The Chief Justice may assign and the Registrar may, with the approval of the Chief Justice delegate to any officer of the Registry any power or function required by these rules to be exercised or performed by the Registrar.

CAVEATS – RULE 26

(1) Where an application is expected to be made or has been made, in petition or proceedings instituted, or about to be instituted in the Court, any person claiming a right to appear before the Court on the hearing of such petition/ application may lodge a caveat.

All such Caveats lodged shall be entered in the Register maintained for the purpose.

(2) Where a Caveat has been lodged under sub-rule (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgment due, on the person by whom the petition has been or is expected to be made under sub-rule (1). Receipt of the registered post shall be filed along with such caveat.

(3) Where, after a caveat has been lodged under sub-rule 1, any petition or application is filed the Registry shall serve a notice of the petition or application on the Caveator,

(4) Where a notice of any Caveat has been served on the petitioner, he shall forthwith furnish the Caveator, at the Caveator's expense, with copy of the petition/application made by him and also with copies of any paper or document which has been or may be, filed by him in support of the petition/ application.

(5) When the petition/ application is fixed in the court, the cause list for the same shall show the name of the parties/ Advocate filing the caveat. The caveat shall also be listed along with the petition/ application.

(6) Where a caveat has been lodged under sub-rule (I), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the petition/ application referred to in sub-section has been made before the expiry of the said period.

Explanation - For the purpose of this rule 'Petition' shall mean any writ petition, appeal, revision, reference or petition for review.

Jammu & Kashmir Writ Proceedings Rules, 1997

Notification No. 7, Dated 03-06-1997

(Published in J&K Govt. Gazette, 3.6.1997/13th Jyai., 1919)

By virtue of Article 226 of the Constitution of India and section 102 of the Constitution of Jammu and Kashmir and all other powers enabling in this behalf, and in supersession of the existing rules, the High Court of Jammu and Kashmir, with the previous approval of Governor of Jammu and Kashmir, hereby make the following rules to regulate the proceeding under Article 226 of the Constitution of India and Section 103 of the Constitution of Jammu and Kashmir.

1. (a) These rules may be called "Writ Proceedings Rules, 1997".

(b) These rules shall come into force from the date Rules are published in the Government Gazette.

2. (a) Every petition under Article 226/Section 103 of the State Constitution shall be called "Writ Petition". It shall contain the full name, parentage, age and complete address of the petitioner(s).

(b) Every such petition shall set out concisely, precisely and chronologically in numbered paragraphs the facts and the grounds on which the petitioner(s) seeks direction, order or writs of the nature specified in the Constitution and shall be concluded with a prayer stating clearly the exact nature of relief sought.

(c) In every memorandum of writ petition, the petitioner(s) shall state whether he by himself or through some other person(s) had presented a petition, civil suit or any other proceeding(s) for same cause of action and; if so, the result thereof. In addition, it shall also be stated whether the petitioner had moved the Supreme Court of India for similar relief or any other court. If so, the result thereof.

(d) Petitioner shall also state whether any other remedy for such address is provided under any law and, if so whether recourse to that remedy has been made and if so, the result thereof and if not the reason thereof.

(e) In case any of the litigating party furnishes wrong information or suppresses the information required vide clauses (c) and (d), he or she shall be liable to appropriate action including imposition of costs.

Rule 3 - Classification of Writ Petition

All petitions under Article 226 and Section 103 of State Constitution to be filed in this Court after the issuance of these rules shall be labelled as "Writ Petitions" and shall be registered serially as such. These may be later on Sub-Classified by the Registry.

Rule 4: All petitions so filed shall be properly indexed and shall be accompanied by statement of chronological narration of material facts date wise on which petitioner(s) wants to rely during the course of submission.

Rule 5: Every petition shall be signed by the petitioner(s) and his Advocate. In case the petitioner happens to be illiterate, his thumb impression should be attested by the Advocate. The petition shall be supported by an affidavit or affidavits, as in Schedule I appended to these rules, verifying the facts stated therein by reference to the numbers of the paragraphs of the petition containing the facts. It shall be drawn up in the name of first person and shall be attested by an Oath Commissioner. While administering oath to the deponent, the Oath Commissioner shall indicate that the contents of the petition were read over to the deponent in the language understood by him and were admitted to be correct. He shall attest the affidavit after proper identification of the deponent. All cuttings on each page of the petition shall be signed / intialled by the Oath Commissioner.

Rule 6: The petition shall be presented in the Registry accompanied by three copies of the petition, the affidavit and the documents, if any, annexed to the petition. The documents annexed to the petition shall be legible and shall be attested by either the issuing authority, or any Gazetted Officer or a Notary or the Advocate appearing for the party.

NOTES

Every writ petition pertaining to Jammu or Kashmir Division is supposed to be presented before the respective wing of the High Court except with the leave of the Chief Justice or in his absence of the senior Judge available at the head quarter.

Where the activities of any institution or petitioner or undertaking pertaining to the functions and discharge of duties being carried out at one division, a writ petition regarding the same cannot be entertained at other of the High Court.

Rule 7: Where the Government or an officer or Department of the Government or a Court or a Tribunal, Board, Commission or arty other body appointed by the Government is the respondent in the petition, the petitioner shall before presenting the petition, serve notice of motion upon the Advocate-General or Standing Counsel, along with as many copies of the petition, affidavit and other papers accompanying it as may be equal to the number of parties to be represented by the Advocate General or the Standing Counsel, as the case may be and one extra copy for the use of Advocate General or the Standing Counsel naming therein the day for the making of the motion/mentioned in case of urgent early hearing.

Rule 8: Where ad-interim relief / interim relief is sought, a separate application shall be made for the purpose. The application shall be supported by affidavit and be filed along with the writ petition. In case such an application is filed subsequent to the filing of writ petition, before filing the same in the Registry, copy thereof shall be provided to the parties as provided in rule 6 and those who have already put appearance in the court pursuant to notice issued by it, otherwise the same shall be transmitted to him / them by the registered post making endorsement thereof in the application.

Rule 9:

(a) Every annexure produced by the petitioner along with the writ petition shall be marked-in the alphabetical order namely, as annexure 'A' annexure 'B' and so on (omitting the alphabet 'I' and the marking shall be

continued in respect of all additional annexure produced subsequently, along with the reply, interlocutory application etc.

(b) Every annexure produced by each of the respondents along with the objections shall be marked in the numerical order, namely, as annexure '1' annexure '2' and so on, and the numbering shall be continued in respect of all additional annexure produced by that respondent subsequently along with the interlocutory applications or additional affidavits etc.

(c) The office of the High Court shall give continuous page numbers to all the papers filed subsequent to the filing of the writ petition as and when they are filed, and arrange them in the order in which they are filed.

Rule 10: The court may on application made by the parties for that purpose, dispense with the production of any of the papers required by the Rules, on terms and conditions as it may deem fit.

Rule 11: All petitions presented in the Registry shall be duly registered and examined whether they conform to the requirement of these rules. Registry shall report about the petition on form Schedule-H. In case some deficiency is found, the Advocate/petitioner shall be directed by the Registry to remove the deficiency within ten days. On failure to do so the Registry will post the petition before the court pointing out these deficiencies.

Rule 12: Procedure for filing common/joint petitions. Several persons having common cause, but are likely to benefit individually may file a common petition. However, they shall have to pay court fee equal to the number of petitioners in the petition. But this rule shall not apply in a case where the petitioners are agitating with a common cause.

Rule 13: Several persons having common or joint interest but not seeking any individual relief (interim or final) may file a single petition. In such case affidavit may be filed by anyone of the petitioners.

Rule 14:

(1) Every writ petition after it has been admitted to register shall be placed for preliminary hearing before a Division Bench to be constituted by the Chief Justice, and after its admission shall ordinarily be heard by a Judge sitting alone unless the bench admitting the petition directs otherwise.

(2) Notwithstanding anything here in before contained the Chief Justice may, if he deems necessary, authorise a Judge sitting alone to hear such petition for admission.

(3) Every petition or application shall be listed in the next regular cause list. However, in case of urgency, the party may approach the court for relaxation of this period. In such case the petition shall be listed as per the direction of the Chief Justice or any other judge specifically authorised in this behalf by him.

Rule 15:

(1) Upon being satisfied, the court may either issue rule nisi or notice for rule nisi or dismiss the petition. In case the court decides to adopt either of the two former courses, the opposite side shall file complete reply on the merits of the case within the time fixed by the court. In case no time is fixed by the court, the reply shall be filed within four weeks from the date of the order. The registry may, however, grant such further extension in time as he may deem fit upon being satisfied as to the genuineness of the request made for the purpose by the party concerned.

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Provided further that court may allow further extension as it may deem fit in the circumstances of the case and on being satisfied by the party, subject to conditions it may like to impose.

(2) Every notice issued by the court shall be sent through registered post with acknowledgement due at the expenses of the petitioner or in any other manner as may be directed by the court.

(3) Before filing the reply in the Registry, copy(s) of the same shall be served upon opposite party(s) personally or upon his counsel and signatures obtained on the original copy in token of the same being received.

(4) No rejoinder to the petition shall be filed except with the leave of the court.

(5) Upon making the order for rule nisi, the court may, upon application made, grant ex parte 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. Provided that an application for rule nisi involving laws relating to public revenue including taxation laws shall not be moved, unless the court otherwise directs, without serving three days prior to notice along with a copy of the application under Article 226 of the Constitution of India and Section 103 of the Constitution of Jammu and Kashmir.

(6) 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 day for the return of the said notice and the application for interim relief shall be posted before the court for final orders on the date so fixed.

NOTES

Rule 15(1) envisages only three eventualities depending upon the satisfaction of the court; first issuance of rule nisi; second issuance of notice for rule nisi and third dismissal of writ petition. When writ petition

comes up for hearing for the first time, the rules do not envisage dispensing with the requirement of issuance of rule nisi or notice for rule nisi and instead issuing a warrant of arrest. Issuance of notice to other party is a sine qua non to the administration of justice. Any proceedings conducted or order passed without notice cannot be sustained in law.

Permission granted to take dash summon does not mean that the usual course of effecting service is altogether to be by passed unless specifically directed by the Court. Even so, when dasti notice is taken, the party effecting service is required to swear an affidavit in support of factum of effecting service on the concerned – **Jammu Dev. Authority v. Bhag Din, 2004(1) JKJ 1.**

Rule 16: Unless otherwise directed by the court, the petitioner shall pay the process fee and supply as many copies of the petition, the affidavit in support thereof and all the annexure thereto, as there are respondents by the day succeeding the date of the order directing issue of notice.

Rule 17: When process fee is not paid and / or "the requisite number of copies of the petition, affidavit and annexure are not supplied within the time prescribed in Rule 16, the petition shall be placed before the Registrar for orders, who may, if satisfied, grant such further extension, as he may deem fit. In case the party still fails to comply with the direction the case shall be listed before the court for appropriate orders.

Rule 18: The notice to be issued to the respondent(s) upon the making of the order for a rule nisi shall be in Form I appended hereto. The rule nisi granted as above and the copies of the petition, the affidavit in support thereof and annexure thereto shall be served on the respondent, if not already served by the petitioner or his Advocate.

Rule 19:

(1) A party against whom an ex parte order has been made shall be entitled to apply to the court to discharge or vary the said order after giving notice to the party or parties who are likely to be affected by such

order of discharge or vacation. Such notice may be served on the Advocate for the parties.

(2) Every application made under sub-rule (1) shall be posted for order before the court in the next Regular Cause List. Such application shall be disposed of within 30 days from this date and if the application is not so disposed of, the interim order shall, on the expiry of that period stand vacated.

Rule 20: Whenever an ex parte interim order made in a writ petition is required or directed to be served on any person or authority not impleaded as a party to the petition, a copy of the order to be so served shall be accompanied by - a copy of the petition, affidavit and the annexure thereto. The party obtaining the direction or order from the court for service of such order on a person or authority other than the one impleaded in the writ petition, shall file into court for service on such person or authority the copies mentioned above.

Rule 21: When a party to the petition files any additional documents into court which he wishes to reply upon in support of his case, he shall file along with the memorandum accompanying the documents, an acknowledgement from the Advocate appearing for the opposite side that copies thereof have been served upon him.

Rule 22:

(1) Cost in the writ petition shall be in the discretion of the court. The court may award exemplary costs / damages in case of frivolous or vexatious litigation.

(2) If costs awarded are not paid, the party entitled to receive the same may apply to the court where upon the court may either effect its recovery by adopting any mode it deems fit in the circumstances of the case or may transmit the order in the writ petition to any subordinate court for execution and such subordinate court shall proceed to execute the same in the manner prescribed for execution of decrees of that court.

PART-II

Rule 23:

(1) The rules contained in this part shall apply to petitions seeking the issue of a writ in the nature of habeas corpus and shall, as far as may be read as supplemental to the rules contained in Part -I of these Rules.

(2) A petitioner seeking the issue of a writ in the nature of habeas corpus, shall file into court a petition supported by an affidavit:-

Provided that when a petitioner is under restraint, the Court may, in its discretion, treat any written representation by him or by any of his relative or friend sent by post or otherwise, as a petition and dispense with an affidavit;

(3) Upon hearing the petitioner or his Advocate, if he appears, the Bench, if satisfied, shall direct a rule nisi to issue to the respondent against whom the order is sought, calling upon him to appear on a date to be fixed therein to show cause why the order sought should not be made and may also further direct him to produce in court the person or persons alleged to have been illegally or improperly detained, to be dealt with according to law.

(4) On the date fixed for hearing or any subsequent date to which the hearing thereon may be adjourned, the court may dispose of the petition.

(5) An order for release if made by the court under the preceding rule shall be sufficient warrant to any Jailor, public authority or other person for the release of the person under restraint.

(6) The detenu shall be supplied free of cost a copy of final order made by the Court under sub-rule (4) above.

SCHEDULE - I

ISon of.....Aged Resident of.....do hereby state an oath / solemn affirmation that I have read the petition / the petition has been read over and explained to me and that the contents of paras..... to.....of the petition are true to my personal knowledge and those of.....paras.....to are true upon information received from. Son of.....Resident of.....which I believe to be true and those of paras..... to.....are true upon information received from the records which I believe to be true and those of paras.....to..... are true upon legal advice received by me which I believe to be true.

I solemnly swear / affirm that this affidavit is true, no part of this is false and nothing has been concealed.

Deponent

NOTES

It is not the form, but substance of the affidavit which is material and has to be looked into. If the affidavit does not meet the form nor in substance, then the petition is without affidavit and in the absence of same, the allegations cannot be look into,"

SCHEDULE - II

**WRITS IN THE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU/SRINAGAR
EXAMINER'S REPORT IN WRIT PETITION**

Presented by Shri..... Advocate

Writ Petition No.....of..... (.....)

(-----)

Petitioners vs. Respondent

Subject matter (in brief)

1. Date of presentation
2. Is the presentation as per the provision of Writ Proceedings Rules, 1997.....
3. Provision of Law invoked
4. Is the name, parentage, age and complete address of the petitioner / s and respondent/ s stated in full
5. Is the writ petition maintainable under Article 226 of the Constitution/ Section 103 of the State Constitution

COURT FEE

6. (a) Is it a petition by a single person?.....
- (b) Is it a joint petition? Have the petitioners stated satisfactory reason for filing the Joint petition?.....
- (c) Is it a common petition?.....
- (d) Is proper court fee paid? Whether the court fee stamps are properly punched and cancelled?.....
7. Is the petition in the prescribed form?.....
8. Whether the writ petition is as per rule?.....
9. Whether the petition is indexed properly and accompanied by statement as required by Rule 4 of the Writ Proceedings Rules

AND

10. Is the petition assigned and by the petitioner and by his Advocate on every page of the petition _
11. (a) Whether the relief claimed is specific?
- (b) Whether any interim relief is prayed for?.....

AFFIDAVIT

- 12 (a) Is it the affidavit in prescribed form?.....
- (b) Is it the affidavit of the petitioner?.....
- (c) If not, whether the affidavit mentions about the authorisation?.....

ANNEXURES

- 13 (a) If the petition is for issue of writ, whether certified or authenticated copy of the impugned order is filed?.....
- (b) if the proceedings have taken place before more than one authority, whether certified or authenticated copies of such orders are filed?.....
- (c) Number of Annexure filed.....
- (d) Whether the enclosures are described as annexure and marked?.....

VAKALATNAMA

- 14. Is the Vakalatnama as per Rule.....
- 15. (a) Are the petitions and annexure typed on strong and durable paper?.....
- (b) Are the petition and annexure legible?.....
- 16. (a) Is there any Caveat pertaining to this Writ petition?.....
- (b) If so, Whether a copy of the writ petition has been served on the caveator?.....

PERMISSION

- 17. (a) If the petition pertains to the wing (Where it is being presented)
- (b) if reply to Cl.(a) is no whether proper permission required by the Rules has been obtained by the Chief Justice / Senior Judge

FOR EXAMINER

- 18. Any other defect not covered by items 1 to 17 above

FOR EXAMINER

- 19. (a) If the written petition is defective, is it required to be returned to attend to defects shown at Sr. No.....
- (b) If there is not defect, should the writ petition be numbered?(The Examiner shall sign while replying to this question)

FOR SECTION OFFICER

- 20. (a) Has the Examiner checked the papers correctly?.....
- (b) If not, state your opinion and suggest the action to be taken (i.e to register or to return for rectifying the defects).....
- (Section Officer shall sign after checking)
- Return the W.P to rectify the defects stated at items No.s.....
- In two weeks / may be registered.

Presented: Register this writ petition. Assistant Registrar
 Additional/Deputy Registrar

FORM NO. I

(Rule 18)

**NOTICE TO RESPONDENT ON AN ORDER OF RULE NISI
 IN THE HIGH COURT OF JAMMU AND KASHMIR AT
 SRINAGAR/JAMMU**

Writ Petition No.of 20

Petitioner Respondent

By Shri

To,

Respondent

Whereas a writ petition filed by the above named petitioner under Article 226 of the Constitution of India/Section 103 of the Jammu and Kashmir Constitution, as in the copy annexed hereto has been registered by this court and upon preliminary hearing, the court has directed the issue of rule nisi / show cause notice why rule nisi should not be issued;

Notice is hereby given to you that if you wish to contest the writ petition, you may enter appearance withindays of the receipt of this notice either in person or by an Advocate appointed by you in that behalf and take such part in the proceedings as you may be advised.

(To be used when the date is not fixed by the Court)

Take further notice that in default of your appearance within the time prescribed, the writ petition will be heard and determined in your absence on any subsequent date and no further notice in relation thereto will be given to you.

Take notice that the above case is directed to be posted for final hearing / for consideration of interim prayer onatyou may appear in person or by an Advocate on the said date, if you wish to contest the above matter.

(To be used when the date is fixed by the order of the court either for final hearing or regarding interim prayer).

Take further notice that if you fail to appear on the said date, the matter will be heard in your absence on the said date or on any subsequent date to which the matter may be posted as directed by the court without any further notice.

INTERIM ORDER

Pending disposal of the aforesaid writ petition, it is ordered by this Court on..... 20..... as follows:

(INTERIM ORDER OF THE COURT TO BE EXTRACTED).

Issued under my hand and the seal of this Court, this the day of20.....

By order of the Court.
Assistant Registrar

LETTERS PATENT

28TH AUGUST, 1943

INTRODUCTION: High Court of Judicature for the Jammu and Kashmir State was established by His Highness Maharaja Hari Singh consisting of a Chief Justice and two puisne Judges vide Order No. 1 of 1985 BK. (1928 A.D) with effect from the fifteenth day of Baishakh Samvat one thousand nine hundred and eighty five. Under clause 8 of this order, an appeal from any original decree or from any order against which an appeal was permitted by any law in force at that time, made by a single Judge of the High Court was allowed to a Bench consisting of two other Judges of the Court.

In 1939, Maharaja promulgated the Constitution Act of 1996 wherein provisions of law relating to the High Court was incorporated and conferred upon the High Court a substantial measure of Independence. On 28th of August, 1943, Maharaja granted letters patent to the High Court of judicature similar to those of High Courts in British India. This gave to the High Court a status and prestige of its own. Thus, the High Court of Judicature, Jammu and Kashmir State was first High Court having letters patent granted to it by an independent Maharaja i.e. the Ruler of the State whereas in case of other States British India, the same were conferred on the High Court's by His Majesty and were subject to the Legislative power of the Governor-General in Council under the Government of India Act, 1919.

A Letters Patent is the charter under which the High Court is established. The powers given to High Court under the Letters Patent are akin to the constitutional powers of a High Court. Thus when a Letters Patent grants to the High Court a power of appeal, against a judgment of a Single Judge of the same High Court, the right to entertain the appeal would not get excluded unless the statutory enactment concerned excludes an appeal under the Letters Patent - ***Shard a Devi v. State of Bihar, 2002(3) SCC 7h. 2.*** A Letters Patent Appeal cannot be ousted by implication, but the right of an appeal under the Letters Patent can be taken away by an express provision in an appropriate legislation - ***Sathappan v. Andhra Bank, Ltd., 2004 (11) SCC 672.***

With the coming into force of New Constitution of the Jammu and Kashmir, 1956 on 26th of January, 1957 an independent judicial body with the High Court of Judicature at the top was created. The High Court has the same jurisdiction as it had before the constitution came into force. However, the High Court has also powers of the Court of Record and to issue writs and orders. Under Section 157(3) and Section 102 of the Constitution of Jammu and Kashmir, 1956 Letters patent continues to be valid law even after the repeal of the Constitution of 1996 Bk - ***Ishwar Saroop & Ors. v. Suraj Parkash & Ors., 1977 JKLR 311.***

Whereas the High Court of Judicature, Jammu and Kashmir State was established by Order No.1 of 1985 and by the Jammu and Kashmir Constitution Act, 1996 and whereas we consider it necessary and expedient to issue Letters Patent to the aforesaid High Court.

1. Now, we upon full consideration of the premises and of our special Grace, certain knowledge and mere motion, hereby ordain that the High Court of judicature shall, until further or other provision shall be made by us, our heirs and successors, in that behalf in accordance with said recited Act of 1996, consist of the Chief Justice and one or more judges as we may from time to time think fit to appoint. The first Chief Justice and the first judges to whom these presents are granted for themselves and their successors-in-office being Rai Bahadur Ganga Nath, Chief Justice, Wazir Janki Nath and Qazi Masud Hassan, Judges being respectively qualified as in the said Act is declared.

2. And we do hereby ordain that every judge of our High Court including the Chief Justice shall be appointed by us and the Chief Justice, if taken from a High Court in British India, shall retire when he attains the age of Sixty five and the Judge when he attains the age of fifty-five years provided:

(a) a judge may by resignation in his hand addressed to us resign his office, and

(b) a judge may be removed from office by our order on the ground of misbehaviour or infirmity of mind or body. The Chief Justice and every Judge of the High Court shall get such salary or other emoluments,

pension, leave and leave allowance as may be prescribed by us in a separate order in pursuance of these presents.

3. And we do hereby ordain that the Chief Justice shall have rank and precedence before the other Judges and all other Judges shall have rank and precedence according to the seniority of their appointment. And we do hereby ordain that the Chief Justice and every judge of the said High Court of Judicature previously to entry upon execution of the duties of his office shall make and subscribe the following declarations before such authority or person as we may commission to receive it:-

"1... A.B., having been appointed Chief Justice (or a judge) of the High Court of judicature, Jammu and Kashmir State, do solemnly swear that I will be faithful and be truly loyal to His Highness Raj Rajeshwar Maharaja Diraj Shri Maharaja Hari Singh Ji Bahadur, Inder Mahindar Sipa-i-Saltant-i-Inglisha, G.C.S.I., G.C.I.E., K.c.v.a., LLD., of Jammu and Kashmir, his heirs and successors and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment and will administer justice according to the law and usage of the realm without fear, or favour, affection or ill will."

5. And we do hereby grant ordain and appoint that the said High Court shall have and use, as occasion may require, a seal bearing a device and impression of the Jammu and Kashmir Coat of Arms with an exergue or label surroundings the same, with the following inscription:- "The seal of the High Court of judicature, Jammu and Kashmir."

The said seal shall be delivered to and kept in the custody of Chief Justice or of an officer of the court from time to time nominated by the Chief Justice.

6. And we do hereby further ordain that all writs, summons, precepts, rules, orders and other mandatory processes to be used by the said High Court shall run and be in the name and style of His Highness and shall be sealed with seal of the High Court.

7. And we do hereby authorize and empower the Chief Justice of the said High Court of judicature from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by our

Government to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice and due execution of all the powers and authorities granted and committed to the said High Court by these our Letters Patent. And it is our further will and pleasure and we do hereby for us, our heirs and successors give, grant, direct and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salary as the Chief Justice shall from time to time appoint for each office and place respectively and as we shall approve of:

Provided always and it is our will and pleasure that all and every the officers and clerks to be appointed as aforesaid shall be resident within the unit of the jurisdiction of the said court so long as they shall hold their respective offices. But this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by us and to absent himself from the said limits during the term of such leave in accordance with the said Rules.

ADMISSION OF ADVOCATES, VAKILS AND ATTORNEYS

8. And we do hereby consistently with Section 68 of the Jammu and Kashmir Constitution Act, 1996, authorise and empower the said High Court of judicature to approve, admit and enroll such and so many Advocates, Vakils and Attorneys as to the Said High Court shall seem meet and such Advocate, Vakils and Attorneys shall be and are hereby authorised to appear for the suitors of the said High Court and to plead or to act or to plead and act for the said suitors according as the said High Court may by its rules and directions determine and subject to such rules and directions.

9. And we do hereby ordain that the said High Court of judicature shall have power to make rules for the qualification an admission of proper persons to be Advocates and Vakils of the said High Court and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates and Vakils; and no person whatsoever but such

Advocates and Vakils shall be allowed to act or plead for, or on behalf of any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf or on behalf of a co-suitor.

CIVIL ORIGINAL JURISDICTION OF THE HIGH COURT

10. And we do hereby ordain that the said High Court of judicature shall have jurisdiction to hear and determine any suit or original proceeding of which the value is not less than rupees ten thousand where the said suit or original proceeding relates to any right, title or obligation rising in the towns of Srinagar and Jammu or anywhere else within our State and notwithstanding anything contained in any section of the code of civil procedure every such suit or proceeding shall be instituted in the said High Court.

NOTES

High Court can exercise civil original jurisdiction only if 'any right, title or obligation' has arisen within the territory of the State. In a case neither the order of dismissal was passed within the territory of the State of Jammu and Kashmir nor was the applicant serving anywhere within the State at the time of his dismissal, no right has accrued to the applicant within the territory of the State merely on the ground that the order of dismissal was served on the applicant at Jammu and thus it would not confer jurisdiction on the court to try the cause. Clause 10 specifically states that the provisions of this clause shall govern the exercise of civil original jurisdiction by the High Court "notwithstanding anything contained in any section of the Civil Procedure". Thus, resort to section 20, Code of Civil Procedure in the face of restrictive provision of clause 10 of the Letters Patent is not permissible - ***V.K. Gandotra v. The New Bank of India, 1979 JKLR 522.***

This case was over ruled by the Division Bench of High Court - ***V.K. Gandotra v. The New Bank of India, 1991 KLJ 471, 1992 SLJ 98,*** by holding that the words 'any right, title or obligations' referred into clause 10 of the Letters Patent are synonymous to words 'cause of action' as

defined in Section 20(c) of Code of Civil Procedure. The High Court gets jurisdiction to entertain a suit on its original side even if a part of cause of action accrues within the jurisdiction of the court. It is not necessary that whole of the cause of action should accrue within the jurisdiction of the Court.

EXTRAORDINARY ORIGINAL JURISDICTION

11. And we do further ordain that the High Court of judicature shall have power to remove and to try and determine, as a court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any court subject to its superintendence when the said High Court shall think proper to do so, either on the agreement of the parties to that effect or for purpose of justice, the reasons for so doing being recorded in the proceedings of the said High Court.

12. And we do further ordain that an appeal shall lie to the said High Court of judicature from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional Jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence) of one judge of the said High Court or one judge of any Division Court and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a judgment of "one Judge of the said High Court or one judge of" any Division Court, consistently with the provisions of the civil procedure code, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court where the judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of the judges of the said High Court or of such division court shall be to us,

our Heirs or Successors and be heard by our Board of Judicial Advisers for report to us.

NOTES

1. Definition of 'Judgment': Clause 12 makes a provision for appeal from 'Judgment' of one Judge of the High Court to a larger bench of the same High Court. The expression 'Judgment' is not defined in clause 12 of the Letters Patent. The definition of 'Judgment' in Section 2(9) of the Code of Civil Procedure has no application in Letters Patent. The word 'Judgment' in clause 12 of Letters Patent includes intermediary and interlocutory judgments/orders which finally determine affecting valuable rights and obligations of the parties.¹

The term 'judgment' under the Letters Patent should rather be construed liberally. There is no hard and fast rule as to what can be considered to be a judgment and what a simple order. The determination depends upon the circumstances of particular case. An order deciding an important issue between the parties affecting the merits of a case should be considered a judgment. The issue of a jurisdiction is very important because it determines the power of the court to adjudicate upon the matters in controversy or otherwise debars the court from holding any enquiry into the matter pending before it. An order which decides that a court has jurisdiction to try a case is a question of vital importance and affects the very root of the case - ***Kaniz Farima & Ors. v. Khusia & Ors., AIR 1965 J&K 118, 1965 KLJ 244.***

An order which is appealable under provisions of Code of Civil Procedure is judgment.²

If an order is made at the interim stage only with a view to maintain equilibrium between the parties during the pendency of the proceedings,

¹ Asrumati Debi v. Kumar Rupendera Deb Raikot, AIR 1953 SC 198, Shah Babulal Khimji v. Jayaben D.Kania (1981)4 SCC 8; AIR 1981 SC 1786, Shri Bishember Nath &Ors. v. State of J&K Ors., 1979 JKLR624 (DB); 1980 KLJ 19; Harparshad Wali & anr. v. Niranjana Nath Mattoo, AIR 1959 J&K 139; M/s Timber Pvt. Ltd. v. Shri Baldev Raj & Ors., 1977 JKLR 137; Bakshi Hardutt v. State of J&K, 1977 JKLR 153; Shri Krishan Avtar v. Shri Om Parkash Gupta, 1982 SLJ 168, 1982 JKLR 10,1982 KLJ181, National Insurance Co. Ltd. v. Union of India, 1989 JKLR 827,1989 KLJ 71, Subal Paul v. Malina Paul, (2003) 10 SCC 361.

² Sudershan Singh v. Santokh Singh, 1994 SLJ 73.

such an order would not be a 'judgment' and would not be appealable unless while maintaining equilibrium, some right or liability directly effecting the subject matter of the suit or proceeding has also determined.³

2. Appealable orders & Judgments: Orders/judgments in which appeal lies under clause (12) of the Letters Patent:-

- (a) Orders refusing to appoint receiver or to grant interim injunction.⁴
- (b) Orders allowing amendment.⁵
- (c) Judgments dismissing the review petition.⁶
- (d) Orders of character specified in Section 104 and Order 43, Rule 1 of Code of Civil Procedure.⁷
- (e) Orders deciding jurisdiction of the Court to try a case.⁸
- (f) Orders holding that defendants are agriculturists' or not for the purpose of J&K Agriculturists' Relief Act.⁹
- (g) Orders rejecting applications under Order 14, Rule 5 Code of Civil Procedure seeking amendment and recasting of issues.¹⁰
- (h) Orders rejecting applications for impleadment.¹¹
- (i) Orders passed under Order 7, Rule 11 (a) Code of Civil Procedure refusing to reject a plaint.¹²

3. Non-appealable orders: Orders in which appeal does not lie under clause 12 of the Letters Patent.

³ Shri Krishan Avtar v. Shri Orn Parkash Gupta & Ors., 1982 SLJ 168.

⁴ Shah Banu Lal Khimji's case.

⁵ Shanti Kumar R. Canji v. Home Insurance Co. of New York, AIR 1974 se 1719.; M/s Nangia Finance & Chit Fund Co. v. Prithvi Raj Kohli, AIR 1986 J&K 21,1985 KLJ 313,1985 JKLR 536.

⁶ Bihar State Electricity Board v. Prabha Aggarwal, (2000)9 SCC 713.

⁷ Abdul Samad & Ors, v. State of J&K, AIR 1969 J&K 52.

⁸ Kaniz Fatima & Ors. v. Khushia & Ors., AIR 1965 J&K 118, 1965 KLJ 244.

⁹ Harparshad Wali & anr. v. Niranjana Nath Mattoo, AIR 1959 J&K 139.

¹⁰ Brij Mohan Bakshi v. Amar Nath Bakshi & Ors., AIR 1980 J&K 54; 1979 KLJ 84.

¹¹ Paw an Kumar v. Narinder Kumar [ain, 2001 KLJ 259; 2001 JKLR 389, AIR 2002 J&K 29.

¹² Liverpool & London S.P. & I. Assm. Ltd. v. M.V. Sea Success, 2004 (9) SCC 512.

- (a) an order staying the proceedings in the suit¹³;
- (b) an order allowing application of third party to implead him a party in writ petition or projecting an application for impleading a party.¹⁴
- (c) an order directing that additional issues be tried along with other issues already framed in the case or directing that evidence may be produced in respect of additi¹⁵onal issue as well as other issues.¹⁶
- (d) an order granting the defendant leave to appear and defend the suit under Order 37, Rule 2 Code of Civil Procedure.
- (e) An order made in exercise of revisional jurisdiction.¹⁷
- (f) An order of impleadment.¹⁸
- (g) An order for attachment before judgment under order 38, Rule 5 Code of Civil Procedure.¹⁹

4. Writ Petitions: An order granting writ of mandamus under section 103 of the Constitution of Jammu and Kashmir (Art. 226 of the Constitution of India) is a judgment, hence appealable under clause 12 of the Letters Patent.²⁰

If a Single Judge exercises jurisdiction under Section 103 of the Constitution of Jammu and Kashmir (Art. 226 of the Constitution of India), Letters patent appeal is maintainable, but if the jurisdiction is exercised under Section 104 of the Constitution of Jammu & Kashmir (Article 227 of the Constitution of India), it is not maintainable 27 But

¹³ Bishember Nath v. State of J&K, 1979 JKLR 624.

¹⁴ Karam Singh v. State of J&K & Ors., AIR 1977 J&K 29; 1976 JKLR 404; Bakshi Hardutt v. State of J&K & ors., 1977 JKLR 153.

¹⁵ Susheela Devi v. Padma Devi, AIR 1968 J&K 71, 1967KLJ 356.

¹⁶ Krishan Lal v. [agdish Dlitt Badyal, AIR 1962 J&K 47; 1962 KLJ 19.

¹⁷ Darshan Kumar v. Collector, AIR 1997 J&K 74; 1996 KLJ 429; Shafaat Hussain v. Jahangeer & Ors., 1993 KLJ 93, 1993 JKLR 390, 1993 SLJ 123; J&K Co-operative Bank v. Shamas-ud-Din Bacha, 1971 JKLR 421, 1970 KLJ 323; MI5 Mehtab Kour v. Govt. of J&K, AIR 1957 J&K 4.

¹⁸ Pawan Kumar v. Narinder Kumar Iain, 2001 KLJ 259; 2001 JKLR 389, AIR 2002 J&K 29.

¹⁹ M/s Timber Pvt. Ltd. v . Shri Baldev Raj & Ors., 1977 JKLR 137.

²⁰ Pushkar Nath Nehru v. Administrator Municipality, AIR 1987 SC 1311.

where the facts justify the filing of petition both under sections 103 and 104 of the Constitution of Jammu and Kashmir judgment by the Single Judge on merits without stating under which provision the matter had been decided, appeal against the said order is maintainable.²¹

In a contempt proceedings courts issued directions for payment of salary to the petitioners, such order cannot be passed in contempt proceedings and it was held that these directions are in essence orders passed in exercise of writ jurisdiction and LPA lies against such orders.²²

5. Second Appeal & Civil Revisions: An appeal under clause 12 is excluded where a judgment is passed in exercise of the appellate jurisdiction in respect of a decree or order made in exercise of the appellate jurisdiction by a court subject to the superintendence of the said High Court. In other words no letters patent lies where a judgment is passed by a Judge of the High Court in second appeal or where an order or judgment is made in exercise of the revisional jurisdiction.

A letters patent appeal is not maintainable against an order passed by a single Judge of the High Court in an appeal in exercise of the jurisdiction under section 104(1) of the Code of Civil Procedure.²³

This is further cleared by incorporation of Section 100-A in Code of Civil Procedure in the year 1983. Second appeal even with the declaration of certificate as required by clause 12 is barred.²⁴

Right of appeal is determined by what the court against whose order the appeal is filed purported to do and not by what it should have done. Even assuming that the order under appeal could or ought to have been passed by the learned Judge in exercise of his appellate jurisdiction, no appeal against the same would still be competent in terms of clause 12, once it

²¹ Lokmat Newspapers (P) Ltd. v . Shankarprasad, (1999)6 SCC 275); AIR 1967 J&K 98 (FE); AIR 1970 J&K 190; 1970 KL] 323, 28 Kanhaiya Lal Agarwal v .Gwalior Sugar Co. Ltd., (2001)9 SCC 609.

²² Mohd. Shafi Pandit v, Mohd. Yousuf Magray & Or5., 2003(1) SLJ 18.

²³ Chandra Kanta Sinha v. Oriental Insurance Co. Ltd., (2001)6 SCC 118.

²⁴ New KeniworthHotel (P) Ltd. v. Orissa State Finance Corpn. &Ors., (1997)3 SCC 462.

shown that he purported to pass the order in exercise of his revisional jurisdiction.²⁵

6. Special Enactments: In case of special enactment, if High Court exercises its appellate jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction was exercised by a Single Judge, his judgment is appealable under clause 12 of the Letters Patent.²⁶

An appeal shall not lie under clause 12, where a Single Judge has decided a first appeal from judgment or order not passed as a court by an officer of Tribunal under the appellate jurisdiction of the High Court. The clause speaks of decrees or orders passed by courts alone, which are subject to the superintendence of the High court and of no others.²⁷

The Arbitration Act is a complete code in itself. It was passed with a view to consolidate and amend the law relating to arbitration. It is no doubt a special Act and therefore lays down special procedure for applications under the Act and for appeals. Act has got its own scheme for appeals.²⁸

7. Powers of the court: Powers of a Division Bench hearing a Letters Patent appeal under clause 12 from the judgment of a Single Judge in first appeal is not limited only to a question of law (as provided under Section 100 of Code of Civil Procedure), but it has the same powers which the Single Judge has as a first appellate court in respect of both questions of facts and of law. The limitation on the powers of the court imposed by Sections 100 and 101 of Code of Civil Procedure cannot be made applicable to an appellate court hearing a Letters Patent appeal for the simple reason that Single Judge of the High Court is not a court subordinate to the High Court.²⁹ A new plea in respect of question of law

²⁵ Yakoob Khan v. Fazal Khan & Ors. 1999 SLJ 505, AIR 2000 J&K I.

²⁶ Ghulam Mohammad Wani v. Shyam Sunder Mirza, 1982JKLR398, AIR 1983 J&K 16, 1982 SLJ.

²⁷ Thread Co. Ltd. V. Jarnes Chadwick & Bros. Ltd., AIR 1953 SC 357.

²⁸ Smt. Kamla Devi v. Balbir Singh, 1981 JKLR 15, 1981 KLJ 144, 1981 SLJ 30I, South Asia Industries (P) Ltd. v. Sarup Singh, AIR 1962 SC 256, 1971 JKLR 10, 1971 AIR 10.

²⁹ Smt. Asha Devi v. Dukhi Sao, AIR 1974 se 2048.

or constitutional is permitted to be raised for the first time in Letters Patent appeal.³⁰

A first appeal against the orders of the trial court lies before the High Court both on facts as well as law. It is the internal working of the High Court which splits it into different 'Benches' and yet the court remains one. A Letters Patent appeal as permitted under the Letters Patent, is normally an intra-court appeal where under the Letters Patent Bench, sitting as a court of correction, corrects its own order in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a Subordinate Court. In such appellate jurisdiction the High Court exercises the powers of a court of error. So understood, the appellate powers under the Letters Patent is quite distinct, in contrast to what is ordinarily understood in procedural language.³¹

8. Cross Objections: The right to file cross objection is not available in respect of Letters Patent appeal, especially when it relates to writ jurisdiction under Art.226 of the Constitution of India corresponding to Section 103 of the State Constitution.³²

9. Certificate of fitness: The interpretation of the words 'the Judge who passed the judgment declares that the case is a fit one for appeal' in clause 12 obviously require the declaration that the case is a fit one for further appeal who passed judgment and by no other Judge. It leaves no doubt that the judge who passed judgment is the sole authority to make the said declaration and the other judge or judges of the High Court has no power or jurisdiction to grant the said certificate.

Even where the Judge, who passed the judgment is not available to give

³⁰ Gurucharan Singh v, Kamla Singh, AIR 1977 se 5; Ganga Devi v. Mst. Roopam, AIR 1967J&K 78.

³¹ Baddula Lakshmaiah and Ors. v. Sri Anjaneya Swami Temple and Ors., (1996)3 see 52.

³² The Assessing Authority & anr. v. [arnmu Metal Rolling Mills, 1971 JKLR605 (FB).

requisite certificate either because of his superannuation or incapacity due to leave or death or some other reason, the declaration cannot be given by any other Judge.³³ In this case, it was further held that an application for leave to appeal under clause 12 of Letters Patent can be entertained later after the judgment is delivered if sufficient cause is shown for inability to apply for leave at the time of delivering of judgment. In this case, judgment was passed by a Judge during vacation without notice to the party and application for leave to appeal was filed after coming to know of the judgment by the party.

10. Vires of clause 12: Clause 12 of the Letters Patent is a perfectly valid law under the provisions of the Constitution of Jammu and Kashmir and is not ultra vires. This provision is also not in contradiction to the provisions contained in Section 96 of the Code of Civil Procedure. Section 96 does not restrict the power of appeal granted under clause 12 of the Letters Patent.³⁴

13. And we do further ordain that the said High Court of judicature shall have the like power and authority with respect to the persons of estates of infants, idiots and lunatics within our territory subject to the provisions of any laws or regulations now in force.

LAW TO BE ADMINISTERED BY THE HIGH COURT OF JUDICATURE

14. And we do hereby ordain that with respect to the law or equity to be applied to each case coming before the said High Court of judicature, in the exercise of its extraordinary original jurisdiction, such law or equity shall, until otherwise provided, be the law and equity which would have been applied to such case by any local court having jurisdiction therein.

³³ Yakoob Khan v. Fazal Khan and Ors., 1999 SLJ 505, AIR 2000 J&K 1, State of J&K v. Dr. T.N. Kaul, AIR 1974 J&K 63 (F.B), 1973 KLJ 398, 1973 JKLR 54.

³⁴ Isawar Saroop & Ors. v. Suraj Parkash & Ors., 1977 JKLR 311 .

15. And we do further ordain that with respect to the law or equity and rule of good conscience to be applied by the said High Court of judicature to each case coming before it, in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the court in which the proceedings in such case were originally instituted ought to have applied to such case.

NOTES

Order issued by the Chief Justice directing that LPAs directing against judgements/orders delivered/passed at Srinagar or Jammu wing must be filed in the wing where such judgment or order is passed and that only in exceptional circumstances mentioned there when it is not practicable to file an appeal pertaining to particular wing at that place, the appeal can be filed in the other wing with the leave of the Chief Justice or in his absence the senior Judge available at Head Quarter.³⁵

An order allowing appeal at preliminary stage without issuance of notice to opposite party and without even admitting it is not sustainable. Notice cannot be dispensed with on ground of innocuousness of order proposed to be passed. Also an order setting aside order of Single Judge and remanding case for reconsideration is not an innocuous order.³⁶

A question of fact not raised before the Single Judge nor it is taken in the memorandum of appeal, it cannot be allowed to be agitated in Letters Patent appeal obviously because had it been taken at the earlier stages, it would have afforded an opportunity to the Respondent to rebut the plea by producing evidence.³⁷

CRIMINAL JUDICATURE

16. And we do further ordain that the said High Court of judicature shall be a court of appeal from the criminal courts of our territories and shall

³⁵ Rajni Sehgal v. State of J&K and anr., A1R 1999 se 73: (1997) 11 scc 73.

³⁶ State of [amrnu & Kashmir v. Sham Lal, AIR 1996 SC 2208.

³⁷ State of J&K & Ors. v. M/sGoodwill Forest Lessees AIR 1974 J&K 1 (FB).

exercise appellate jurisdiction in all criminal cases in which an appeal is allowed by law.

17. And we do further ordain that the said High Court of judicature shall be a court of reference and revision from the criminal courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the sessions judges or by any other officer authorised to refer such cases to the High Court and to revise all such cases tried by any officer or court possessing criminal jurisdiction subordinate of the High Court.

18. And we do further ordain that the said High Court or judicature shall have power to direct the transfer of any criminal case or appeal from any court to any other court of equal or superior jurisdiction and also to direct the preliminary investigation or trial of any criminal case by any officer or "court otherwise competent to investigate or try it though such case belongs, in ordinary course, to the jurisdiction of some other officer of Court.

NOTES

An appeal in said High Court is excluded from a sentence or order passed or made by a Single Judge of High Court in exercise of powers under the provision of Article 227 of the Constitution of India, (Section 104 of the Constitution of Jammu and Kashmir) or in exercise of criminal jurisdiction.³⁸

An appeal is also excluded from an order made by a Single Judge of the court in exercise of his revisional jurisdiction as also an appeal from a sentence or order passed or made by him in exercise of his superintendence.³⁹

Case pending before Panchayat Court can not be transferred by the High

³⁸ Central Mine Planning and Design Institute Ltd. v. Union of India, (2001)2 SCC 588.

³⁹ The J&K Co-operative Bank v. Sharnas-ud-Din Bacha, 1971 JKLR421; 1970 KLJ 323, AIR 1970 J&K 190.

Court.⁴⁰

CRIMINAL LAW

19. And we do hereby ordain that all person brought for trial before the said High Court of judicature, in the exercise of its jurisdiction as a court of appeal, reference or remission charged with any offence for which provision is made by Act XII of 1989 called the Ranbir Penal Code or by any Act amending or excluding the said Act, which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts and not otherwise.

EXERCISE OF JURISDICTION ELSEWHERE THAN AT THE ORDINARY PLACE OF SITTING OF THE HIGH COURT

20 And we do further ordain that whenever it shall appeal to the Prime Minister of our State, subject to our control, convenient that the jurisdiction and power by these our Letters Patent and by the recited Act vested in the said High Court should be exercised in any place other than the usual place of sitting of the said High Court or at several places by way of circuit, the proceedings in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority.

POWER OF SINGLE JUDGE AND DIVISION COURTS

21. And we hereby declare that any function which is hereby directed to be performed by the High Court of judicature, in the exercise of its original or appellate jurisdiction, may be performed by any judge or by any Division Court thereof, appointed or constituted for such purposes, and if such Division Court is composed of two or more judges and the judges are divided in opinion as to the decision to be given on any point,

⁴⁰ Mannmohan Singh v. Mst. Surjeet Kaur, AIR 1965 J&K 71.

such point shall be decided according to the opinion of a majority of the judges, if there shall be a majority, but if the judges should be equally divided, they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other judges and the point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

NOTES

Provisions of Section 98, Code of Civil Procedure are not applicable to High Courts which are governed by Letters Patent and a matter can be referred to a third Judge on difference of opinion between two judges. Section 98 shall not alter or otherwise affect any provision of Letters Patent of the High Court. Clause 21 provides that in the event of difference of opinion between equally divided judges as to decision to be given on any point, it shall be heard upon that point by one or more of the other judges and the case must be decided on the basis of the majority opinion.⁴¹

Section 98(2) of Code of Civil Procedure is not an independent jurisdiction so as to exclude the applicability of clause 21 of Letters Patent.⁴² In case of difference of opinion between two judges, case has to be referred to a third judge and not to a Full Bench as required under section 62 of the J&K Constitution Act. 1996 which must be deemed to have been modified by the Letters Patent subsequently granted to High Court.⁴³

22. And we do further ordain that our High Court shall have, as provided by Section 64 of the Jammu and Kashmir Constitution Act, 1996, exclusive superintendence and control over all courts for the time being subject to its appellate or revisional jurisdiction and all such courts shall be subordinate

⁴¹ Sikh Gurudwara Parbandhak Committee v. M.P. Dass Chela, (1998) 5 SCC 157; Dhanarajan v. Moti Lal Doge, AIR 1929 Mad. 641; M.D. Puri and Sons v. Lyons Cinema Ltd., AIR 1933 Lah. 648; Pritam Das v. Akbari, AIR 1973 MP 224; Sushila Kesarbhai v. Bai Lilawati, AIR 1975 Guj. 39; Rulia Devi v. Raghunath Prasad, AIR 1979 Patna 115; Jayanti Devi v. Srichand Mal Agarwal, AIR 1984 Pat. 296.

⁴² Reliance Industries Ltd. v. Pravin Bhai Jasbai Patel & Ors., (1997) 7 SCC 300.

⁴³ Ghulam Mohd. v. Badshah Begum, AIR 1970 J&K 159, 1971 KLJ 54.

to the High Court. And we do further ordain that the Chief Justice or a judge of the High Court authorised by him in this behalf, shall from time to time, visit and inspect the proceedings of the Courts subordinate to the High Court and shall give such directions in matters not provided for by law as may be necessary to secure the due administration of justice.

NOTES

The High Court has power of superintendence over courts over which it has revisional or appellate jurisdiction. Section 21 of the J&K Houses & Shops Rent Control Act, 1966 empowers the High Court to hear revisions, from an order of the District Judge passed in appeal against the order of Rent Controller, it can exercise superintendence over the court of the Rent Controller as well.⁴⁴

CONTEMPT

23. And we do further ordain that our High Court shall be a court of record and shall have the power to punish with fine not exceeding rupees one thousand or with simple imprisonment for a period not exceeding six months or with both any person who is guilty of contempt in relation to itself or to any court subordinate to it;

Provided that the High Court shall not take cognisance of a contempt alleged to have been committed in respect of a court subordinate to it when such contempt is an offence punishable under the Ranbir Penal Code.

NOTES

When the contempt alleged to have been committed in respect of a Subordinate Court and the contempt alleged is also an offence punishable under the penal code, High Court cannot take cognizance of such case.⁴⁵

24. [Omitted]

⁴⁴ Bodh Raj v. Gurcharan Dass, AIR 1955 J&K 29.

⁴⁵ Shabhan Bhat v. Habib Magray & Ors., 1979 JKLR 29.

25. And we do further ordain that the High Court shall comply with such requisitions as may from time to time, be made under the commands of High Highness for records, returns and statements in such form or manner as His Highness may require.

26. And we do further ordain that the High Court may consistently with the law for the time being in force make rules in respect of the matters specified in Section 67 of the Jammu and Kashmir Constitution Act, 1996 subject to the conditions specified in sub-section (2) of the aforesaid section.

NOTES

A conjoint reading of clause 26 and Section 67(a) of the Jammu and Kashmir Constitution Act shows that the High Court has power to regulate the practice of the High Court which power must include the power to make rules providing period of limitation for appeals to be filed under clause 12 of the Letters Patent.

The limitation provided for any lis in the first schedule of the Limitation Act has on terms of Section 29 of that Act itself, to give way to a different period of limitation provided for the same lis in any other special law within the meaning of the Section.

This is thus no inconsistency between High Court Rules and Limitation Act in regard to the period of limitation provided as 60 days for filing Letters Patent Appeal.⁴⁶

27. And we do further ordain that appeals shall lie from the judgment, decrees or orders of the said High Court of judicature in civil matters to us and shall be filed before the Board of judicial Advisers subject to the conditions and in the manner provided by the rules framed by the Board in accordance with section 71 of the Jammu and Kashmir Constitution Act 1996.

⁴⁶ State of J&K v, G.S. Baroca, AIR 1978 J&K 64 (DB)