

CHAPTER 14

Appeals and Revisions—Civil

Part A

THE APPELLATE SYSTEM OF THE PUNJAB

1. Clashes of Appellate Courts—There are four classes of Appellate Courts in the Punjab—the High Court of the District Judge; the Court of the Additional District Judges, if so directed by the District Judge under Section 21 (2) of the Punjab Courts Act; and the Court of the Subordinate Judge of the 1st Class, if so empowered by a Notification issued by the High Court, under Section 39(3) of the Punjab Courts Act.

Appellate powers of Senior Sub-Judges—By High Court Notification No. 170 Gaz./XXI-C.6 dated 16th of May, 1935 as amended by Notification No. 53, Gaz/XXI-C.6 dated the 23rd February, 1940. The Senior Subordinate Judge of the first class in each Civil District of the Punjab has been invested with appellate powers in respect of decree or orders passed by any subordinate Judge in a small cause of a value not exceeding Rupees five hundreds and in an unclassified suit of a value not exceeding Rs. 100 High Court Notification No. 171-Gaz/XXI-C.6 dated 16th May, 1935, similarly empowers the Senior Subordinate Judge of the first class in respect of the Union Territory of Delhi.

Enhanced powers of Senior Sub-Judges—Some Senior Subordinate Judges of the first class have been invested personally with enhanced appellate powers in respect of decrees or orders passed by any Subordinate Judge to the following extent:

- (a) in a small cause of a value not exceeding Rs. 1,000 (one thousand);
- (b) in a lane suit of a value not exceeding Rs. 250 (two hundred fifty), and
- (c) in an unclosed suit of a value not exceeding Rs. 500 (five hundred). For the notification quoted in the paragraph *see* Chapter 20-B, paragraph IV.

2. Forum of appeal—(i) Section 39 of the Punjab Courts Act, 1918, as amended provides that An appeal from a decree or order of a Subordinate Judge shall be:

- (a) to the District Judge, where the value of the original suit concerned does not exceed Rs. 5,00,000/-.
- (b) to the High Court in other Case.

3. (Not applicable for Delhi).

4. Withdrawal of appeal from and transfer to Sub-Judges—If any such appeal is pending before a District Judge the latter may transfer it to any Subordinate Judge under his administrative control competent to dispose of it. He may also withdraw any appeal so transferred, and either dispose of it himself, or transfer it to any competent Court under his administrative control (Section 40 of the Punjab Courts Act).

5. Section 41 of the Punjab Courts Act lays down the conditions under which a second appeal lies to the High Court from a decree passed in appeal by a Court subordinate to the High Court. Section 42(2) lays down that no second appeal shall lie in a “Small Cause” of a value not exceeding Rs. 500.

6. Appeal in compromise cases—Section 96(3) of the Code of Civil Procedure provides that no appeal shall lie from a decree passed with consent of parties.

7. Appeal from preliminary decrees—Section 97 of the Code provides that a preliminary decree, which has not been appealed against, shall not be questioned in any appeal preferred from the final decree.

8. Appeal from orders—An appeal lies from any order of the kinds specified in Section 104 of the Code and Order XLIII, Rule 1, and from no other orders (*see* the first 13 words of Section 38(1) of the Punjab Courts Act).

Part B

GENERAL PROCEDURE OF APPELLATE COURTS

(a) Copies to accompany the Memorandum of Appeal

1. First Appeals, Second Appeals, Judgment Disposal of some issue. Duty of copying agency—Order XLI, Rule 1, of the Code of Civil Procedure provides that the memorandum of appeal shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded. A Proviso has been added to this rule in Punjab making it possible that where two or more cases are tried together and disposed off by one judgment the appellant(s) may with the permission of the proper authority file only one copy of the judgment—though he/they may have filed more than one appeal. Second proviso has been added and it provides that the Court may permit the appeal to be filed with true copies duly authenticated by an advocate as correct.

¹(It has further been added that the appellant in case of decree for payment of money shall as per the instructions of the Appellate Court deposit the amount dispute in the appeal or furnish such security as the Court may think fit).

In Second appeals in addition to be copies specified in Order XLI, Rule 1, the memorandum of appeal shall be accompanied by a copy of the judgment of the Court of first instance, unless the Appellate Court dispenses therewith, vide Rule 2, Order XLII, added by the Punjab High Court.

When some issues are disposed of at first and the rest by the final judgment, it is sufficient to attach a copy of the final judgment to the memorandum of appeal. (For the purposes of the above Rules, *see* Civil Appeal No. 1481 of 1928).

Whenever an application is made for a copy of a civil judgment for the purpose of applicant should be informed that a copy of the decree is also requisite and he should be supplied with such copy, unless he declines to pay the necessary fees in which case a certificate under the signature of the officer incharge of the Copying Department, should be endorsed on the copy of the judgment supplied to the applicant to the effect that he was duly informed that a copy of the decree was requisite and after being so informed declined to pay fees for the same. Similarly an applicant for a copy of an Appellate judgment for the purposes of a second appeal should be told that a copy of the trial Court's judgment is also requisite.

In second appeal in addition to the copies specified in Order XLI, Rule 1, the memorandum of appeal shall be accompanied by a copy of the judgment of the Court of first instance, unless the Appellate Court dispenses therewith. Vide Rule 2, Order XLII, added by the Punjab High Court.

When some issues are disposed of at first and the rest by the final judgment, it is sufficient to attach a copy of the final judgment to the memorandum of appeal, for the purposes of the above Rules. (*See* Civil Appeal No. 2481 of 1928).

Whenever an application is made for a copy of a civil judgment for the purpose of appeal the applicant should be informed that a copy of the decree is also requisite and he should be supplied with such copy, unless he declines to pay the necessary fees in which case a certificate under the signature of the officer-in-charge of the Copying Department, should be endorsed on the copy of the judgment supplied to the effect that he was duly informed that a copy of the decree was requisite and, after being so informed declined to pay fees for the same. Similarly an applicant for a copy of an Appellate judgment for the purposes of a second appeal should be told that a copy of the trial Court's judgment is also requisite.

2. Exclusion of time sent in obtaining copies for limitation purpose—Section 12 of the Indian Limitation Act, 1963 directs that the period allowed for appeal shall be reckoned exclusive of the judgment and decree appealed against. The time requisite is the time beyond the applicant's control occupied by the Copying Agency after an application for a copy has been duly made to the proper officer. In granting copies therefore, the Court or the Copying Agency should be careful to endorse on the copy the following particulars:

- (a) The date of presentation of the application for a copy;
- (b) The date on which the copy was examined and attested;
- (c) The date of delivery or dispatch of the copy.

Appellate Courts should be careful to notice any delay in furnishing these copies.

3. Translations—Where the order appealed against is in English, it will be sufficient to file a copy of the English order without its counterpart in the vernacular. But should the appellant require it, he should be allowed to take a copy of the vernacular translation (if any) as well.

(b) Preliminary reception of appeals

4. Reception, service of processes, addresses for service—The general rules regarding the reception of plaint and service of summons on defendants in Chapter 1, “Practice in the Trial of Civil Suits” apply *mutatis mutandis* to the reception of appeals and service of notices on respondents. It should be noted that an address for service filed during the course of the trial holds good for the purposes of Appellate proceedings also; and such address given by respondents must be stated in the memorandum of appeal according to Order XLI, Rule 38, as added by the Punjab High Court.

5. Reception by Court official—In District Courts, the usual practice is for the Clerk of the Court or Superintendent to receive in the first instance the memorandum of appeal. There is no objection to this practice which is a convenient one for both the Court and suitors. It must, however, be distinctly remembered that the only duty which can legally be delegated to the Clerk of the Court or Superintendent is to receive the memorandum of appeal and note thereon the date of its receipt. The order as to its admission or rejection can be passed only by the Court itself.

6. Amendment—If the grounds of objection to the decree appealed against are not set out concisely or are argumentative or in narrative form in contravention of Order XLI, Rule 1, of the Code of Civil Procedure the petition of appeal should be returned for amendment under Order XLI, Rule 3 of the Code and Courts should exercise freely the discretion thereby vested in them with a view to stricter compliance with the provisions of the second sub-rule of Order XLI, Rule 1 of the Code. Persistent disregard by any appeal-writer of these provisions should, after due warning, lead to the withdrawal of his licence.

(Condonation of delay: A new sub-rule 3A added in Rule 41 by CPC Amendment Act, 104 of 1976 provides that the Court may condone the delay of limitation on its being satisfied by the applicant).

7. Admission—The memorandum of appeal, when bearing the proper Court fees, must be admitted, if presented in the prescribed form and within the prescribed time, unless it is rejected or returned for amendment under Order XLI, Rule 3, of the Code. When an appeal has been admitted, it will be endorsed with the date of presentation, and the date fixed for hearing, and will be registered by the proper officer of the Court.

8. Disposal under Order XLI, Rule 11—(i) In admitting the memorandum of appeal the Court should decide whether it will proceed under Order XLI, Rule 11, of the Code, and fix a time for hearing the appellant or his pleader (with or without the records) without notice to the respondent, or send notice of the appeal to the respondent and to the Court against whose order the appeal is made, and fix a day for hearing the appeal.

(ii) Notice ought not to be issued to a respondent unless the Appellate Court, either without pursuing the records of the lower Court, or after calling for the pursuing such records, is in doubt as to the correctness of the decree appealed against.

9. Disposal under Order XLI, Rule II—(a) The Appellate Courts should be careful to see that the object of the statutory provision of Order XLI, Rule 11, is not defeated and respondents put to unnecessary trouble and expense by the indiscriminate issue of notice to respondent in all cases.

When decision is confirmed under this rule, the confirmation should be notified to the lower Court.

Such confirmation falls within the definition of ‘decree’ as given in Section 2(2) of the Code, and being as such, appealable, a formal decree should be framed in every case disposed of under the provisions of Order XLI Rule 11.

(b) Attention is drawn to a recent Punjab amendment of Order XLI, Rule 14, which require that every notice of appeal to a respondent other than a respondent stated to be proforma shall be accompanied by a copy of the Memorandum of appeal, or if so permitted by concise statement. The required number of copies of the memo or concise statements, as the case may be should be filed immediately after the appeal has been admitted and the Court has fixed a day for hearing the appeal under Order XLI, Rule 12.

(c) *Formulation of Question of Law*—Order 42 Rule 2 inserted vide by CPC Amendment Act, 104 of 1976 provides that after admitting an appeal for hearing, the High Court shall formulate the substantial question of law under Section 100 CPC and the appellant cannot urge any other ground except with the leave of the Court. This provision is mandatory (1978 PLR 89).

Comments

Order of High Court dismissing appeal in limine is a decree. *Hakam Singh v. Jaswant Singh and others*. AIR 1974 Punjab 235.

10. Amendment after admission—When an appeal has been registered and a date has been fixed for hearing, the petition cannot be returned for amendment. The appeal must be disposed of in the regular manner by dismissal, or by a (judgment affirming, varying or reversing the decree of the lower Court). If the appellant should desire to urge any ground of objection not set forth in the memorandum of appeal, he can, under the provisions of Order XLI, Rule 2, of the Code of Civil Procedure, do so only with the permission of the Court and such permission should ordinarily be applied for in writing some time before the date fixed for the hearing, under Order XLI, Rule 12 of the Code, in order that the respondent may have sufficient opportunity of contesting the case on that ground, without the necessity of a postponement.

11. Attention is drawn to the definition of decree given in Section 1(2) of the Code and to Sections 104, 105 and Order XLIII which specify what orders are appealable.

12. Appeals by Indigent persons—Appeals by indigent persons should not be admitted unless the Court, after perusal of the judgment and decree finds the decree to be contrary to law or some

usage having the force of law or is otherwise erroneous or unjust. In this connection the amendments of Order XLIV, Rule 1, by Act 66 of 1956 may be studied.

(c) Hearing and disposal of appeal

13. Default in appearance—(i) If, on the day fixed for the hearing of the appeal under Order XLI, Rule 12, of the Code or any other day to which the hearing is adjourned, the appellant does not attend in person or by agent, the appeal should usually be dismissed for default. It is illegible to take up a civil appeal in the absence of the appellant or his agent and confirm the decision of the lower Court on the merits instead of dismissing the appeal for default: for if the appellant afterwards appears, shows good cause for his absence on the day fixed for hearing and applies for readmission of the appeal, the Court is met by the difficulty that the appeal has already been heard on the merits.

(ii) Attention is drawn to a recent amendment in Punjab making Section 5 of the Indian Limitation Act, applicable to applications for re-admission of appeals under Order XLI, Rule 19.

(iii) In any case, where a party, whose non-attendance is ground for dismissal of the proceeding for default, is not present when the proceeding is called on for hearing, the Court may postpone passing final order, if there is other work, which the Court can conveniently take up in the meantime. No hard and fast rule can be laid down, and the matter is one for the exercise of proper discretion in view of all the circumstances. But Courts should endeavor to dispose of cases on merits as far as practicable and avoid dismissals in default when this can be done without wasting of time of the Court or prejudice to other litigants.

The above remarks also apply to the hearing of an appeal *ex-parte* owing to the absence of a respondent.

If an adjournment is necessary by reason of a party not having appeared when first called, he may properly be ordered to pay all the costs caused by the adjournment.

14. Special power—Special attention is invited to Order XLI, Rule 33, which introduces an English rule of law whereby an Appellate Court is given the fullest power to do complete justice between the parties concerned in the suit, whether such parties have joined in the appeal or not.

15. Appeals from orders during proceedings—Appeals from orders in pending proceedings should be disposed of as promptly as possible, so as not to delay those proceedings unnecessarily.

(d) Judgment in appeal

16. Contents—The judgment of the Appellate Court should contain the point or points for determination, the decision thereupon and the reasons for the decision, and, when the decree appealed against is reversed or varied, the relief to which the appellant is entitled (Order XLI, Rule 31, of the Code of Civil Procedure). In other words, the judgment should be complete in itself and should give a concise account of the case between the parties, intelligible not only to the superior Appellate Courts, but to the public.

17. Grounds of appeal and evidence—It is not intended that the judgment of the lower Appellate Court should ordinarily be as detailed as that of the Court of first instance, *e.g.*, it will rarely be necessary for the lower Appellate Court to deal with the evidence of particular witnesses or to examine in detail the whole of the evidence; but it should give an intelligent and clear summary of the evidence which it had to consider and state the reasons for which it thinks particular portion of the evidence to have been more or less worthy of consideration. If any ground of appeal is not pressed by the counsel or is withdrawn, the Appellate Court should invariably mention this fact in the judgment. An appellant is entitled to expect not only that every objection to the judgment or the proceedings of the lower Court, which is taken in due form and is relevant and of a substantial character, should be considered, but also that a decision upon the point raised by such objection should be recorded in the Appellate Courts judgment.

18. Findings of fact—The findings of fact arrived at by the Court of first appeal are, as a rule, final and cannot be challenged in second appeal except in certain grounds. The Court of first appeal should therefore realise their responsibility in the matter and see that the findings of fact on which their decision is based are clear and precise. The judgment should indicate that all relevant evidence, oral as well as documentary, has been considered. Second, appeals have to be frequently admitted for the reasons that the necessary findings of fact or either vague or non-existent or that importance evidence on record has been ignored.

19. How parties to be named—As confusion frequently arises from the use of the words “appellant” and “respondent” in two successive Appellate Courts, especially when the parties appealing belong to different sides, Appellate Courts should not use these terms without the addition of the words “plaintiff or “defendant”, as the case may be; or the later terms alone may be used.

(e) Decrees in appeals

20. Contents of decrees—Under the provisions of Order XLI, Rule 35, of the Code the decree of the Appellate Court is required to contain the number of the appeal, the names and description of the parties a clear statement of the relief granted or other determination of the appeal, and an order as to costs.

Note—For the directions as to filling up decretal orders of Appellate Court see Chapter 11-B, Para 2(ii).

(f) Remands

21. Fixing date of appearance in lower Court—Whenever, a case is remanded for redecision under Order XLI, Rules 23 or 23A or for the trial of certain issues under Order XLI, Rule 25, the Order ordering the remand shall at once, in the presence of the parties, give them a date on which they shall appear before the trial court and note the fact on the record.

22. Court to which remand case is pending—(a) When a case is remanded by an Appellate Court under Order XLI, Rule 23 or 23A it must be restored to its original number on the register of the Court, to which it is remanded and be considered as a pending regular suit; but if it is

referred for the re-investigation of certain issues, under Order XLI, Rule 25, it should remain on the register of the Appellate Court and be considered as an appeal pending in that Court.

(b) Rule 23A of Order XLI was inserted in 1938 by the Punjab High Court and enables the Appellate Court to remand a case where retrial is considered necessary, even though the Court from whose decree the appeal is preferred has disposed of the case otherwise than on a preliminary point.

23. Framing of decree—An order of remand under Order XLI, Rule 23 or 23A of the Code of Civil Procedure not being a decree as defined in the said Code, the framing of a formal decree by the Appellate Court in cases remanded by it under these rules is incorrect.

24. Date of return by lower Court—When a case is remanded under Order XLI, Rule 25, of the Code of Civil Procedure, reasonable time should be fixed for the return of findings by the lower Court. The latter Court should make every effort to submit the report by the date fixed, but if this is found to be impracticable, it should apply at once for an extension of time, starting its reasons and mentioning the date by which it expects to be able to submit the required report.

25. Date for objections—Appellate Courts should pay special attention to the provisions of Order XLI, Rule 26, of the Code of Civil Procedure. They should take measures to ensure that in all cases of remand under Order XLI, Rule 25, of a definite period, subsequent to the return of the record of the inquiry to the Appellate Court, shall be fixed to admit of objections being filed by any dissatisfied party, due notice of such period being given to the parties. No Court should proceed to final judgment without ascertaining that such period has been duly allowed. If it has not, the Appellate Court should either postpone the appeal or ascertain and record the objections of the parties or either of them or ascertain and record that neither party has any objection to advance.

26. Additional evidence—Appellate Courts have the power to admit additional evidence under order XLI, Rule 27, of the Code of Civil Procedure, but this can only be done on the grounds stated therein and the reasons for admitting the evidence must always be clearly recorded. The test for the admission of such additional evidence and the manner in which the appellate Courts should exercise their discretion in this behalf are laid down in 1951, Supreme Court Reports, 258.

Comments

The discretion given to the appellate Court by Order 41, Rule 27 to receive & admit additional evidence is not an arbitrary one, but is a judicial one circumscribed by the limitations specified in that rule. If the additional evidence is allowed to be adduced contrary to the principles governing the reception of such evidence, it will be a case of improper exercise of discretion, & the additional evidence so brought on the record will have to be ignored & the case decided as if it is non-existent.

The legitimate occasion for the application of Order 41, Rule 27 is when, on examining the evidence as it stands, some inherent lacuna or defect becomes apparent, not where a discovery is made, outside the Court, of fresh evidence & the application, is made to import it. The true test, therefore, is whether the appellate Court, is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

Where the first appellate Court, admitted additional evidence before examination of the evidence on the record & consequently before reaching a decision that the evidence as it stood disclosed a lacuna which the Court required to be filled up for pronouncing its judgment:

Held, that the appellate Court was not justified in admitting the additional evidence. *Arjan Singh v. Kartar Singh & Others*, AIR 1951 SC 193 : 1951 SCR 258. (*Kessowji v. G. I. P. Railway*, 1907 (34) I. A. 115 : 1907 (31) ILR Bom. 881(P. C.) & *Parsotim v. Lal Mohan*, 1931 (58) I. A. 254 : AIR 1931 P. C. 143 Relied).

(g) Service of Processes of Appellate Courts

27. Duty of lower Court in the matter of service—(a) It not infrequently happens that processes of Appellate Courts sent to districts for service on respondents are returned with a note to the effect that the respondent has left or is not residing in the district, and the hearing of the appeal has therefore to be postponed. In view of Rule 38 of Order XLI added by Punjab High Court, Service of the notice of appeal and other processes shall issue of the addresses filed by the parties under Order VII, Rule 19 and Order VIII, Rule 11 or subsequently altered under Order VII, Rule 24 or Order VIII, Rule 12 and service effected at such addresses shall be as effective personal service. Attention is also drawn to Order V, Rule 23 of the Code of Civil Procedure, which places the Court called upon to serve the process in the same position as if it had itself issued it. The provisions of the Code on this point should be carefully attended to.

(b) It shall be in the discretion of the appellate Court to dispense with the service of a notice on any respondent or his legal representative when the respondent did not appear at the hearing in Court. (*Please see* Rule 14(3) as added in Punjab).

28. Statement of serving officer—In the case of summonses from the High Court serving the summons shall record the statement of the peon as to such service on solemn affirmation, and shall verify the same with its signature before returning the summons.

Part C SECURITY IN REVISION CASES

1. Security to be given in Lower Court—When an application for revision under Section 44 of the Punjab Courts Act, 1918, or under Section 25 of the Provincial Small Cause Courts Act, No. IX of 1887, has been made in the High Court and, it is ordered in that Court that the applicant shall give security in any Court subordinate to the High Court for the due performance of the decree or order sought to be revised, such Court shall, upon receiving intimation from the High Court of such order, accept from the applicant any amount which he may offer to deposit, or any security which he may tender for the purpose of satisfying or giving security for the performance of the said decree or order, and shall retain the same in its custody pending the further order of the High Court.

2. Report by Lower Court to High Court—When a deposit has been made or security tendered in the Subordinate Court, such Court shall, on the request of the applicant or on receipt of a precept from the High Court, certify in writing addressed to the Deputy Registrar of the High Court what has been done by the applicant, with its own opinion, if required, as to the sufficiency of the security tendered.

3. Proceedings in lower Court—In all cases not provided for in these directions or by a special order of the High Court, the same practice shall be followed in the Subordinate Court as prevails

in such Court, when taking security in pursuance of an order made under Order XXI, Rule 26(3) of the Code of Civil Procedure (requiring security upon stay of execution of a decree), or under Order XLI, Rule 5(3) (c) of the Code of Civil Procedure (for the taking of security for the performance of a decree or order under appeal to a superior Court).

4. Procedure in Lower Court—The proceeding directions shall apply, so far as may be, when a person intending to apply to the High Court under Section 44 of the Punjab Courts Act, 1918, or Section 25 of Act IX of 1887, has performed, or tendered security for the performance of, or deposits the amount of the decree or order which he desires to have revised, in the Court in which such decree or order is pending for execution, or by which it would ordinarily be executed under Section 38 of the Code of Civil Procedure.

Part D

PROCEDURE IN THE CASE OF APPEALS AND APPLICATIONS PRESENTED AFTER PERIOD OF LIMITATION

1. Memorandum of appeal to be checked for purposes of limitation—Upon the presentation of a memorandum of appeal to an Appellate Court, the officer whose duty is to examine such memorandum shall examine the copy or copies of judgments and decrees attached to the appeal, and shall calculate whether, after deducting the allowance sanctioned by law, the memorandum has been presented within time.

2. (i) *Office to note when appeal appears to be time-barred*—If the memorandum of appeal appears to be presented after time, or there appears to be ground for doubting whether it is within time, such officer shall record upon or annex to the memorandum of appeal a note of his calculation showing:

(1) the date when the period expired, without any allowances;

(2) the allowances to which appellant seems entitled;

(3) the date when the period expired, after all the allowances, to be made under head (2) have been made.

(ii) *Points to be borne in mind in making calculation*—In making such calculations the following points must be borne in mind:

(a) The date when the time expired under head (1) is to be calculated irrespective of such date falling upon a day when the Court is closed for a holiday (including Sunday) or for vaction, any allowance on this account being noted under head (2) of the calculation.

(b) The entries endorsed on copies of judgments and the like will be assumed to be correct.

(c) The date on which the application for copy is made and also the day on which the copy is given will each be reckoned separately as one day unless both events occur on the same day.

(d) The date on which a copy is ready for delivery will be deemed for the purpose of such calculation, to be the day on which it is given.

In this connection attention is invited to the ruling of the High Court in I.L.R. III Lahore 280, where it was held that when copies of judgments are despatched by post, in accordance with rules, the period intervening between completion and despatch of the copies must be excluded in computing the period allowed for an appeal.

3. Duty of office to obtain orders of the Court—It shall be the duty of the officer presenting the memorandum of appeal for the consideration of the Court of appeal to bring to its notice the note of calculation above prescribed.

4. Note by Court—Whenever, on the date fixed for taking a memorandum of appeal into consideration, it appears *prima facie* to the Court to have been presented after the expiry of the period prescribed by law, as calculated in the manner prescribed by law, the Court shall record its opinion to that effect, starting the number of days by which such period seems to have been exceeded.

Comments

To attract applicability of Section 5 of Limitation Act, 1908, formal application is not necessary. *Mela Singh v. Kartar Singh and another*, (1961) 63 Punj. LR 919.

5. Appellant required on explain for delay—In such cases if the appellant has not tendered, with the memorandum of appeal, any explanation of the delay in presenting it, the Court shall, if the appellant is in present in person or by agent, record an order thereon, or to be annexed thereto, requiring the appellant to supply such explanation in writing, and to represent such appeal within a period to be specified in the order. Such period may be enlarged in the discretion of the Court, either before or after it has expired, upon sufficient cause for such enlargement being shown to the satisfaction of the Court.

6. Examination of appellant—When the memorandum of appeal is represented with the explanation required or when the memorandum of appeal as first presented contains an explanation of the delay in presenting it, the Court shall take into consideration the explanation offered, and may examine the appellant or his agent, in order to elucidate the explanation.

7. Court may dismiss appeal as barred by time—If the Court is of opinion that assuming all the facts stated by way of explanation to be true, the explanation is sufficient, the Court shall record an order to that effect, and shall reject the appeal as barred by time.

8. Appellants to be called upon to prove facts which bring appeal within time—If the Court considers that if all or any of the facts stated by way of application be true, the explanation will be sufficient to justify the admission of appeal it shall give the appellant an opportunity of proving the truth of the facts stated.

9. Mode of proof—Such proof may be given either by affidavit, or by oral testimony, upon a date to be fixed by the Court for that purpose, unless the appellant be ready to give, and the Court find it convenient to receive, such proof at once.

10. Power of Court to dismiss appeal as barred by time when no explanation of delay attached to memorandum of appeal—When no such explanation is presented with the memorandum of appeal, and the appellant is not present in person or by agent, the Court may, after recording its opinion as directed in paragraph 4 above, unless it sees cause to postpone the passing of a final order, forthwith dismiss the appeal as barred by time without considering the merits of the appeals as set forth in the memorandum.

11. Procedure as to applications—Similar procedure should be observed, so far as may be, by all Civil Courts, whether of original jurisdiction or not, in respect of applications for review, and any other applications to which the provisions of Section 5 of the Indian Limitation Act have been made applicable. The applications for re-admission of appeals under Order XLI, Rule 19, applications for restoration of suits under Order IX, Rule 4, and 9 and applications for setting aside of decrees passed *ex parte* Order IX, Rule 13, are a few examples.

Part E
TRANSMISSION OF APPELLATE COURTS ORDERS TO
LOWER COURTS

The following rules are made by the High Court in regard to the transmission of Appellate Court's orders to lower Courts:

Rules

1. District Judge to send copies of his judgments to Senior Subordinate Judge—The District Judge will send copies of all his judgments on appeal to the Senior Subordinate Judge.

2. Senior Sub-Judge to send it to Court concerned—The Senior Subordinate Judge will transmit the copies to the original Court for information and return direct to the Record-keeper, to whom the original records will be sent at once.

3. Senior Subordinate Judge to send copies of his judgments to Court concerned—The Senior Subordinate Judge will send copies of all his judgments on appeal to the original Court for information and return direct to the Record-keeper, to whom the original record will be sent at once.

4. Form to be attached by appellate Court to original record—Appellate Courts will attach to the original record the following form :

Date

Copy of judgment attached by District Judge

Copy of judgment attached by Senior Subordinate Judge

Copy of judgment despatched by Senior Subordinate Judge

Copy of judgment received by Record-keeper.....

(Translation is/is not attached)

(It will be simpler to have only one form).....

5. Running list of the record-keeper—(a) The Record-keeper will maintain a running list prepared from the above form of all cases in which copies of judgments have been sent out. When the copies of judgments are returned to him by the original Courts, he will add them to the records fill in the date of receipt, and strike those cases off his running list.

(b) If copies are not returned within 10 days of despatch he will issue a reminder (which should be on a printed form) and if that is ineffective, report the matter to the despatching Court.

(c) The running list will be in the following form :

Name of case Date of despatch Date of reminder,
if any

1 2 3

(d) The reminder will be in the following printed form—

To the Court of.....

A copy of the judgment of the.....was despatched

to you by the.....on the..... and

has not yet been received by the Record-keeper. Please return at once.

Date. Record-keeper.

6. Sending for records from record-room—Officer presiding over Subordinate Courts held at the District Headquarters, if in any particular case they desire to see their original record, will be allowed to call for it, provided that it must not leave their Court room.

1. Due to addition of Rule 1(3) in Order 41 CPC.