REGISTERED NO. PT.-40

The Bihar Gazette

EXTRA ORDIANARY

PUBLISHED BY AUTHORITY

9 KARTIK 1930 (S)
(NO. PATNA 519) PATNA, FRIDAY, 31ST OCTOBER 2008

LAW DEPARTMENT

NOTIFICATION

24th October 2008

No. B/Estt.(H.C.)-06-03/2008/5254/J Whereas the draft of the following rules which the High Court of Patna proposed to make was published as required by sub-section (1) of Section 122 of the Code of Civil Procedure, 1908 (Act 5 of 1908) in Notification No. 4238 dated 05th September, 2008 in Bihar Gazette dated 05th September, 2008 inviting objections or suggestions from the persons likely to be affected thereby and notice was given that the said draft rules will be taken into consideration on or after fifteen days from the date of its publication in the Official Gazette.

AND WHEREAS, the said copy of the Gazette Notification was made available to the publication 05th September, 2008.

AND WHEREAS, no objections or suggestions have been received to the said draft rules by the High Court of Patna.

NOW, THEREFORE, in exercise of the powers conferred by Section 89 and Section 122 read with Section 126 and 127 of the Code of Civil Procedure, 1908 (Act 5 of 1908) the following rules made by the High Court, Patna and approved by the State Government is hereby published namely:-

Bihar (Cases Flow Management in Subordinate Courts) Rules, 2008.

By order of the Governor of Bihar,
RAJENDRA KUMAR MISHRA,
Sec-cum-legal Remembrancer.

Bihar (Case Flow Management in Subordinate Courts) Rule, 2008

1. Title, application and commencement:

(i) These rules may be called **Bihar (Cases Flow Management in Subordinate Courts) Rules, 2008.**

(ii) These rules shall apply to all suits and Civil, Criminal and other Proceedings before the Subordinate Civil Courts and Tribunals under the control of High Court.

(iii) These rules shall come into force from the date of their publication in the Official Gazette.

PART-I

Division of Civil Suits and Appeals into Tracks:

(1) The Presiding Officer of the Court shall categorize the suits and proceedings in his Court into Track I, track II, Track III and Track IV.

(a) Track I:

(i) Maintenance
(ii) Child Custody
(iii) Divorce
(iv) Visiting Rights
(v) Appointment of Guardian and Wards
(vi) Letter of Administration
(vii) Succession Certificate
(viii) Eviction Cases
(ix) Permanent Injunction.

(b) Track II:

(i) Execution Cases
(ii) Recovery of Rent
(iii) Money Suits
(iv) Suits based on Negotiable Instruments
(v) Proceedings Under M.V. Act

(c) Track III:

(i) Partition
(ii) Declaration
(iii) Specific Performance
(iv) Possession
(v) Mandatory Injunction
(vi) Appeals
(vii) Damages
(viii) Easements
(ix) Trade Marks, Copy right, Patents.

(d) Track IV: All other matters, not included in Track I to III.

(2) The Presiding Officer shall endeavour to dispose of the cases in Track I within 9 months, the cases of Track Ii within 12 months and the cases in Track III and IV 24 months from the date of appearance of defendant-respondent.

(3) The Presiding Officer at the request of the parties and for valid reason can dispose of the case early, irrespective of the Track norms prescribed.

(4) Once in a month, the Ministerial Officer of each Court will prepare a report as to the stage and progress of cases which are proposed to be listed in next month and place the report before the Court. When the matter are listed on

each day, the judge concerned may take such decision and he may consider/deem fit in presence of counsel / parties in regard to each case for removing any obstacles in service of summons, completion of pleadings etc. with a view to make the case ready for disposal.

(5) The Judge referred to in clause (4) above may shift a case from one Track to another, depending upon the complexity and other circumstances of the case.

(6) Where computerization is available, the monthly date will be fed into the computer in such a manner that the Judge referred to in clause (4) above, will be able to ascertain the position and the stage of every case in every Track from the concerned screen, and after some period, all cases pending in his Court will be covered. Where computerization is not available, the monitoring will be done manually.

PART - II

Original Suit:

1. Fixation of time limits while issuing notice:

(a) Wherever notice is issued in a suit, the notice should indicate that the Code prescribes a maximum of 30 days for filing written statement (which for special reasons may be extended up to 90 days) and, therefore, the defendants may prepare the written statement expeditiously and that the matter will be listed for that purpose on the expiry of eight weeks from the date of issue of notice (so that it can be a definite date). After the written statement is filed, the replication (If any, proposed and permitted) should be filed within six weeks of receipt of the written statement. If there are more than one defendant, each one of the defendant should comply with this requirements within the time-limit.

(b) The notice referred to in clause (a) shall be accompanied by a complete copy of the plaint and all its annexure / enclosures and copies of the interlocutory applications, if any.

(c) If interlocutory applications are filed along with the plaint, and if an ex-parte interim order is not passed and the Court is desirous of hearing the respondent, it may, while sending the notice along with the plaint, fix an earlier date for the hearing of the application (than the date for filling written statement) depending upon the urgency for interim relief.

2. Service of Summons / Notice and completion of pleadings:

(a) Summons may be served as indicated in clause (3) of Rule 9 of Order V.

(b) In the case of service of summons by the plaintiff or a courier where a return is filed that the defendant has refused notice, the return will be accompanied by an undertaking that the plaintiff or the courier, as the case may be, is aware that if the return is found to be false, he can be punished for perjury or summarily dealt with for contempt of Court for abuse of the provisions of the Code. Where the plaintiff comes forward with a return of 'refusal', the provisions of Order 9A Rule (4) will be followed by re-issue of summons through Court.

(c) If it has not been possible to effect service of summons under Rule 9 of Order V, the provisions of Rule 17 of Order V shall apply and

the plaintiff shall within 7 days from the date of its inability to serve the summons, to request the Court to permit substituted service. The dates for filling the written statement and replication, if any, shall accordingly stand extended.

3. Calling of Cases (Hajri or Call Work or Roll Call):

The present practice of the Court-Master or Bench-Clerk calling all the cases listed on a particular day at the beginning of the day in order to confirm whether Counsel are ready, whether parties are present or whether various steps in the suit or proceeding has been taken, is consuming a lot of time of the Court, sometimes almost two hours of the best part of the day when the judge is fresh. After such work, the Court is left with very limited time to deal with cases listed before it. Formal listing should be first before a nominated Ministerial officer of the Court Administration, one or two days before the listing in Court. He may give dates in routine matters for compliance with earlier order of Court. Cases will be listed before Court only where an order of the Court is necessary or where an order proscribing the consequences of default or where a peremptory order or an order as to costs is required to be passed on the judicial side. Cases which have to be adjourned as a matter of routine for taking steps in the suit or proceeding should not be unnecessarily listed before Court. Where parties / counsel are not attending before the Ministerial-officer or are defiant or negligent, their cases may be placed before the Court. Listing of cases on any day before a Court should be based on a reasonable estimate of time and number of cases that can be disposed of by the Court in a particular day. The Courts shall, therefore, dispense with the practice of calling all the cases listed adjourned to any particular day. Cases will be first listed before a nominated senior officer of the Court, nominated for the purpose.

4. Procedure on the grant of interim orders:

(a) If an interim order is granted at the first hearing by the Court, the defendants would have the option of moving appropriate applications for vacating the interim order even before the returnable date indicated in the notice and if such an application is filed, it shall be listed as soon as possible even before the returnable date.

(b) If the Court passes and ad-interim ex-parte order in an interlocutory application, and the reply by the defendants is filed, ad if, thereafter, the plaintiff fails to file the rejoinder (if ay) without good reason for the delay, the Court has to consider whether the stay or interim order passed by the Court should be vacated and shall list the case with that purpose. This is meant to prevent parties taking adjournment with a view to have undue benefit of the ad interim orders. The plaintiff may, if he so chooses, also waive his right to file a rejoinder. A communication of option by the plaintiff not to file a rejoinder, made to the Ministerial Officer will be deemed to be the completion of pleadings in the interlocutory application.

5. Referral to Alternate Dispute Resolution:(In the hearing before the Court, after completion of pleadings, time limit for discovery and inspection, and admission and denials, of documents shall be fixed preferably restricted to 4 weeks each)

After the completion of admission and denial of documents by the parties, the suit shall be listed before the Court (for examination of parties under Order X of the Civil Procedure Code. A joint statement of admitted facts shall be filed before the said date). The Court shall thereafter, follow the procedure prescribed under the Alternative Dispute Resolution and Mediation Rule, 2008.

6. Procedure on the failure of Alternate Dispute Resolution: On the filing of report by the Mediator under the Mediation Rules that efforts at Mediation have failed or a report by the Conciliator under the provisions of the Arbitration and conciliation Act, 1996, or a report of no settlement in the Lok Adalat under the provisions of the Legal Services Authority Act, 1987 the suit shall be listed before the Ministerial Officer within a period of 14 days. At the said hearing before the Ministerial Officer, all the parties shall submit the draft issues proposed by them. The suit shall be listed before the Court within 14 days thereafter for framing of issues.

When the suit is listed after failure of the attempts at conciliation, arbitration or Lok Adalat, the Judge may merely inquire whether it is still possible for the parties to resolve the dispute. This should invariably be done by the Judge at the first hearing when the matter comes back on failure of conciliation, mediation or Lok Adalat.

if the parties are not keen about settlement, the Court shall frame the issues and direct the plaintiff to start examining his witnesses. The procedure of each witness filing his examination-in-chief and being examined in cross or re-examination will continue, one after the other. After completion of evidence on the plaintiff's side, the defendants shall lead evidence likewise, witness after witness, the chief examination of each witness being by affidavit and the witness being then cross-examined or re-examined. The parties shall keep the affidavit in chief examination ready whenever the witness's examination is taken up. As far as possible, evidence must be taken up day by day as stated in clause (a) of proviso to Rule 2 of Order XVII. The parties shall also indicate the likely duration for the evidence to be completed, and for the arguments to be thereafter heard. The Judge shall ascertain the availability of time of the Court and will list the matter for trial on a date when the trial can go on from day to day and conclude the evidence. The possibility of further negotiation and settlement should be kept open and if such a settlement takes place, it should be open to the parties to move the Ministerial Officer for getting the matter listed at an earlier date for disposal.

7. Referral to Commissioner for recording of evidence:

(a) The High Court shall conduct an examination on the subjects of the Code of Civil Procedure and Evidence Act. Only those advocates who have passed an examination conducted by the High Court on the subjects of Code of Civil Procedure and Evidence Act - shall be appointed as Commissioners for recording evidence. They shall be ranked according to the marks secured by them.

(b) It is not necessary that in every case the Court should appoint a Commissioner for recording evidence. Only if the recording of evidence is likely to take a long time, or there are any other special grounds, should the Court consider appointing a Commissioner for recording the evidence. The Court should direct that the matter be

listed for arguments fifteen days after the Commissioner filed his report with the evidence.

The Court may initially fix a specific period for the completion of the recording of the evidence by the Commissioner and direct the matter to be listed on the date of expiry of the period, so that Court may know whether the parities are co-operating with the Commissioner and whether the recording of evidence is getting unnecessarily prolonged.

(c) Commissioners should file an undertaking in Court upon their appointment that they will keep the records handed over to them and those that may be filed before them, safe and shall not allow any party to inspect them in the absence of the opposite party / counsel. If there is delay of more than one month in the dates fixed for recording evidence, it is advisable for them to return the file to the Court and take it back on the eve of the adjourned date.

8. Costs:-So far as awarding of costs at the time of Judgment is concerned, awarding of costs must be treated generally as mandatory is as much as the liberal attitude of the Courts in directing the parties to bear their own costs had led parties to file a number of frivolous cases in the courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on number of other issues or points which were unnecessarily raised, costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to rules in force. If ay of the parties has unreasonably protracted the proceedings, the Judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.

9. Proceedings for Perjury:-If the Trial Judge, while delivering the judgment, is of the view that any of the parties or witnesses have willfully and deliberately uttered blatant falsehood, he shall consider (at least in some grave cases) whether it is a fit case where prosecution should be initiated for perjury and order prosecution accordingly.

10. Adjournment:-The amendments to the Code have restricted the number of adjournment to three in the course of hearing of the suit, on reasonable cause being shown. When a suit is listed before a Court and any party seeks adjournment, the Court shall have to verify whether the party is seeking adjournment due to circumstances beyond the control of the party, as required by clause (b) of proviso to Rule 2 of Order XVII. the Court shall impose costs as specified in Rule 2 of the Order XVII.

11. Miscellaneous Applications:-The proceedings in a suit shall not be stayed merely because of the filing of Miscellaneous Application in the course of suit unless the Court in its discretion expressly thinks it necessary to stay the proceedings in the suit.

PART-III

First Appeals to Subordinate Courts

1. Service of Notice of Appeal:

(a) A memorandum of appeal before the Appellate Court for obtaining interim orders may be filed before the Appellate Court immediately after filing of Memo of Appeal.

(b) Advance noticed should simultaneously be given by the counsel for the party who is proposing to file the appeal, to the counsel for the opposite party who appeared in the Subordinate Court so as to enable the respondents to appear if they so choose, even at the first hearing stage.

2. Essential Documents to be filed with the Memorandum of Appeal:

The appellant shall, as far as possible, file, along with the appeal, copies of essential documents marked in the suit, for the purpose of enabling the appellate Court to understand the points raised or for purpose of passing interim orders.

3. Fixation of time limits in interlocutory matter:-Whenever notice is issued by the appellate Court in interlocutory matters, the notice should indicate the date by which the reply should be filed. The rejoinder, if any, should be filed within four weeks of receipt of the reply. If there are more parties than one who are Respondents, each one of the Respondent should comply with this requirement within the time limit and the rejoinder may be filed within four weeks for the receipt of the last reply.

4. Steps for completion of all formalities / (Call Work) (Hajri):-The appeal shall be listed before the Ministerial Officer of the Court for completion of all formalities necessary before the appeal is taken up for final hearing. The procedure indicated above of listing the case before a senior officer of the Appellate Court Ministerial Officers for giving dates in routine matters must be followed to reduce the 'call work' (Hajri) and only where judicial orders are necessary, such cases should be listed before Court.

5. Procedure on grant of Interim-orders:-If an interim order is granted at the first hearing by the Court, the Respondents would have the option of moving appropriate applications for vacating the interim order even before the returnable date indicated in the notice and if such an application is filed, it shall be listed as soon as possible even before the returnable date.

If the Court passes an ad-interim ex-parte order, and if the reply is filed by the Respondents and if, without good reason, the appellant fails to file the rejoinder, Court shall consider whether it is a fit case for vacating the stay or interim order and list the case for that purpose. The appellant may also waive his right to file the rejoinder. Such choice shall be conveyed to the Ministerial Officer on or before the date fixed for filing of rejoinder. Such communication of option by the applicant to the Ministerial Officer will be deemed to be completion of Pleadings.

6. Filing of Written submission:-Both the appellants and the respondents shall be required to submit their written submissions two weeks before the commencement of the arguments in the appeal. The cause-list should indicate if written submissions have been fled or not. Wherever they have not been filed, the Court must insist on their being filed within a particular period to be fixed by the Court and each party must serve a copy thereof on the opposite side before the date of commencement of arguments. There is no question of parties filing replies to each other's written submission. Continue

The Court may consider having a Caution List / Alternative List to take care of eventualities when a case does not go on before a Court and those cases may be listed before a Court where, for any reason, the scheduled cases are not taken up for hearing.

7. **Costs:**-Awarding of costs must be treated generally as mandatory in as much as it is the liberal attitude if the Courts in not awarding costs that has led to frivolous points being raised in appeals or frivolous appeals being filed in the courts. Costs should invariably follow the event and reasons must be assigned by the Appellate Court for not awarding costs. If any of the parties have unreasonably protracted the proceedings, the Judge shall have the discretion to impose exemplary costs after taking into account the costs that may have been imposed at the time of adjournments.

PART-IV

Application / Petition under Special Acts

This chapter deals with the applications / petitions, filed under special Act, like the industrial Dispute Act, Hindu Marriage Act, India Succession Act, etc.

The practice directions in regard to original suits should mutatis mutandis apply in respect of such applications / petitions.

PART-V

Criminal Trials and Criminal Appeals to Subordinate Courts

(a) Criminal Trail

1. Criminal Trials should be classified based on offence, sentence and whether the accused is on bail or in jail and the Presiding Officer of the Court shall categorize the trials and proceedings in his Court into Track I, Track II, Track III, Track IV and Track V.

(a) Track I: Capital punishment, rape and cases involving sexual offences or dowry deaths should be kept in this category.

(b) Track II: Other cases where the accused is not granted bail and is in jail, should be kept in this category.

(c) Track III: Cases which affect a large number of persons such as cases of mass cheating, economic offences, illicit liquor tragedy and food adulteration cases, etc. should be kept in this category.

(d) Track IV: Offences which are tried by special courts such as POTA, TADA, NDPS, Prevention of Corruption Act, etc. should be kept in this category.

(e) Track V: all other offences.

2. The Presiding Officer shall endeavour to dispose of the trails in Track I cases within a period of nine months, Track II and Track III cases within twelve months and Track IV within fifteen months.

(b) Criminal Appeals:

3. Wherever an appeal is filed by a person in jail, and also when appeals are filed by State as far as possible, the memorandum appeal may be accompanied by important documents, if any, having a bearing on the question of bail.

4. In respect of appeals fled against acquittals, steps for appointment of amicus curie or Stage Legal Aid Counsel in respect of the accused who do not have a lawyer of their own should be undertaken by the registry (State Legal Services Authority) immediately after completion of four weeks of service of notice. It shall be presumed that in such an event the accused is not in a position to appoint counsel.

5. Advance notice should simultaneously be given by the counsel for the party who is proposing to file the appeal, to the counsel for the opposite party in the Subordinate Court, so as to enable the party to appear if they so choose even at the first hearing stage.

PART-VI

Notice issued under section 80 of Code of Civil Procedure:-Every public authority shall appoint an officer responsible to take appropriate action on a notice issued under S. 80of the Code of Civil Procedure. Every such officer shall take appropriate action on receipt of such notice. If the Court finds that the concerned officer, on receipt of the notice, failed to take necessary action or was negligent in taking the necessary steps, the Court shall hold such officer responsible and recommend appropriate disciplinary action by the concerned authority.

PART-VII

Note: Whenever there is any inconsistency between these rules and the provision of either the Code of Civil Procedure, 1908 or the Code of Criminal Procedure 1973 or the Civil and Criminal Court Rule of High Court of Judicature at Patna or ay other statutes, the provisions of such Codes and Statutes shall prevail.

PUBLISHED AND PRINTED BY THE SUPERINTENDENT,
BIHAR SECRETARIAT PRESS, PATNA.
Bihar Gazette (Extra)519—571+400—D.T.P.