

Civil Laws (Amendment) Act, 2009

6 of 2009

[20 March 2009]

CONTENTS

CHAPTER 1 :- PRELIMINARY

1. Short Title And Commencement

CHAPTER 2 :-AMENDMENT OF SECTIONS OF THE CODE OF CIVIL PROCEDURE, SAMVAT 1977

2. Amendment Of Section 26
3. Amendment Of Section 27
4. Amendment Of Section 32
5. Amendment Of Section 58
6. Amendment Of Section 60
7. Insertion Of New Section 89
8. Amendment Of Section 95
9. Amendment Of Section 96
10. Substitution Of Section 100A
11. Substitution Of Section 102
12. Amendment Of Section 115
13. Amendment Of Section 148

CHAPTER 3 :- AMENDMENT OF ORDERS

14. Amendment Of Order Iv
15. Amendment Of Order V
16. Amendment Of Order Vi
17. Amendment Of Order Vii
18. Amendment Of Order Viii
19. Amendment Of Order IX
20. Amendment Of Order X
21. Amendment Of Order Xi
22. Amendment Of Order Xii
23. Amendment Of Order Xiii
24. Amendment Of Order Xiv
25. Amendment Of Order Xvi
26. Amendment Of Order Xvii
27. Amendment Of Order Xviii
28. Amendment Of Order Xx
29. Amendment Of Order Xxi

30. Amendment Of Order Xxvi

31. Amendment Of Order Xli

CHAPTER 4 :- REPEAL AND SAVINGS

32. Repeal And Savings

CHAPTER 5 :-AMENDMENT OF THE LIMITATION ACT, SAMVAT 1995

33. Amendment Of Section 12

Civil Laws (Amendment) Act, 2009

6 of 2009

[20 March 2009]

An Act to amend the Code of Civil Procedure, Samvat 1977 and the Limitation Act, Samvat, 1995. Be it enacted by the Jammu and Kashmir State Legislature in the Sixtieth Year of the Republic of India as follows:-

CHAPTER 1 PRELIMINARY

1. Short Title And Commencement :-

(1) This Act may be called the Civil laws (Amendment) Act, 2009.

(2) It shall come into force on the date of its publication in the Government Gazette.

CHAPTER 2 AMENDMENT OF SECTIONS OF THE CODE OF CIVIL PROCEDURE, SAMVAT 1977

2. Amendment Of Section 26 :-

In the Code of Civil Procedure, Samvat 1977 (hereinafter referred to as the principal Act), existing section 26 shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:-

"(2) In every plaint, facts shall be proved by affidavit."

3. Amendment Of Section 27 :-

In section 27 of the principal Act, the following words shall be inserted at the end, namely:-

"on such day not beyond thirty days from date of the institution of the suit".

4. Amendment Of Section 32 :-

In section 32 of the principal Act, in clause (c), for the words "five hundred rupees", the words "five thousand rupees" shall be substituted.

5. Amendment Of Section 58 :-

In section 58 of the principal Act,-

(i) in sub-section (1)-

(a) in clause (a), for the words "one thousand rupees", the words "five thousand rupees" shall be substituted;

(b) for clause (b), the following clause shall be substituted, namely:-

"(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks.";

(ii) in sub-section (1A), for the words "five hundred rupees", the words "two thousand rupees" shall be substituted.

6. Amendment Of Section 60 :-

In section 60 of the principal Act,-

(i) in sub-section (1)-

(a) in the first proviso for clause (i), excepting the proviso thereto, the following clause shall be substituted, namely:-

"(i) salary to the extent of the first one thousand rupees and two-thirds of the remainder in execution of any decree other than a decree for maintenance;:

(b) after clause (i), the following clause shall be inserted, namely:-

"(ia) one-third of the salary in execution of any decree for maintenance;"

(c) clause (q) shall be omitted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.".

7. Insertion Of New Section 89 :-

In the principal Act, after section 88, the following section shall be inserted, namely:-

"89. Settlement of disputes outside the Court. -(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for-

(a) arbitration;.

(b) conciliation;

(c) judicial settlement including settlement through Lok Adalat; or

(d) mediation.

(2) Where a dispute has been referred-

(a) for arbitration or conciliation, the provisions of the Jammu and Kashmir Arbitration and Conciliation Act, 1997 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 19 of the Jammu and Kashmir Legal Services Authority Act, 1997 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Jammu and Kashmir Legal Services Authority Act, 1997 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed by the High Court.

(3) Notwithstanding anything contained in the Court Fees Act, Samvat, 1977, where the Court refers the parties to the suit to any one of the mode of settlement of dispute in this section, the plaintiff shall be entitled to a certificate from the Court authorizing him to receive back from the collector, the full amount of the fee paid in respect of such plaint."

8. Amendment Of Section 95 :-

In section 95 of the principal Act, in sub-section (1), in clause (b),

for the words "one thousand rupees", the words "fifty thousand rupees" shall be substituted.

9. Amendment Of Section 96 :-

In section 96 of the principal Act, in sub-section (4), for the words "three thousand rupees", the words "ten thousand rupees" shall be substituted.

10. Substitution Of Section 100A :-

For section 100A of the principal Act, the following section shall be substituted, namely:-

"100A. No further appeal in certain cases. -Notwithstanding anything contained in any Letters Patent of the High Court or in any instrument having the force of law or in any other law for the time being in force in the State, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

11. Substitution Of Section 102 :-

For section 102 of the principal Act, the following section shall be substituted, namely:-

"102. No second appeal in certain cases. -No second appeal shall lie from any decree, when the subject matter of the original suit is recovery of money not exceeding twenty-five thousand rupees."

12. Amendment Of Section 115 :-

In section 115 of the principal Act, in sub-section (1),-

(i) for proviso, the following proviso shall be substituted, namely:-

"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings."

(ii) after sub-section (2), but before the Explanation, the following sub-section shall be inserted, namely:-

"(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court."

13. Amendment Of Section 148 :-

In section 148 of the principal Act, after the words "such period ", the words "not exceeding thirty days in total", shall be inserted.

CHAPTER 3 AMENDMENT OF ORDERS

14. Amendment Of Order Iv :-

In the First Schedule to the principal Act (hereinafter referred to as the First Schedule), in Order IV, in rule 1,-

- (i) in sub-rule (1), for the words "plaint to the Court", the words "plaint in duplicate to the Court" shall be substituted;
- (ii) after sub-rule (2), the following sub-rule shall be inserted, namely:-

"(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).":

15. Amendment Of Order V :-

In the First Schedule, in Order V,-

- (i) in rule 1, for sub-rule (1), the following shall be substituted, namely:-

"(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant of the suit as may be specified therein:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of the plaint and admitted the plaintiffs claim:

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day which shall not be later than ninety days from the date of service of summons.":

- (ii) for rule 2, the following shall be substituted, namely:-

"2. Copy of plaint annexed to summons. -Every summons shall be accompanied by a copy of the plaint."

- (iii) in rule 6, for the words "for the appearance of the defendant", the words, brackets and figures "under sub-rule (1) of rule 1" shall be substituted;

- (iv) in rule 7, for the words "all documents", the words, figure and letter "all documents or copies thereof specified in rule 1A of Order

VIII" shall be substituted;

(v) for rule 9, the following rules shall be substituted, namely:-

"9. Delivery of summons by Court. -(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within the jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinate or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court direct that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorized by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been only served on the defendant:

Provided that where the summons was properly addressed, prepaid

and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

9A, Summons given to the plaintiff for service. -(1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance, of the defendant permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

(2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.

(3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when, tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant";

(vi) rule 19A shall be omitted;

(vii) in rule 21, for the words "or by post", the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted;

(viii) in rule 24, for the words "by post or otherwise", the words "by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted;

(ix) In rule 25, for the words "by post", the words "by post or by such courier service as may be approved by the High Court, by fax

message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted."

16. Amendment Of Order Vi :-

In the First Schedule, in Order VI-

(i) rule 5 shall be omitted;

(ii) in rule 15, after sub-rule (3), the following sub-rule shall be inserted, namely:-

"(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.";

(iii) for rules 17 and 18, the following rules shall be substituted, namely:-

"17. Amendment of pleadings. -The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

18. Failure to amend after Order.--If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court."

17. Amendment Of Order Vii :-

In the First Schedule, in Order VII,-

(i) for rule 9, the following rule shall be substituted, namely:-

"9. Procedure on admitting plaint. -Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.";

(ii) in rule 11, after sub-clause (d), the following sub-clauses shall be inserted, namely:-

"(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9;"

(iii) for rule 14, the following rule shall be substituted, namely:-

"14. Production of document on which plaintiff sues or relies. -(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.";

(iv) rule 18 shall be omitted.

18. Amendment Of Order Viii :-

In the First Schedule, in Order VIII,-

(i) for rule 1, the following rules shall be substituted, namely:-

"1. Written statement, -The defendant shall within thirty days from the date of service of summons on him present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons. 1 -A. Duty of defendant to produce document upon which relief is claimed or relied upon by him. -(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document-

(a) produced for the cross-examination of the plaintiffs witnesses, or

(b) handed over to a witness thereby to refresh the memory.";

(ii) rule 8A shall be omitted;

(iii) for rules 9 and 10, the following rules shall be substituted, namely:-

"9. Subsequent pleadings. -No pleading subsequent to the written statement of a defendant other than by way of defence to set off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

10. Procedure when party fails to present written statement called for by Court.--Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."

19. Amendment Of Order IX :-

In the First Schedule, in Order IX,-

(i) for rule 2, the following rule shall be substituted, namely:-

"2. Dismissal of suit where summons not served in consequences of plaintiffs failure to pay cost. - Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court fee or postal charges, if any, chargeable for such service, or failure to present copies of the plaint as required by rule 9 of Order VII, the Court may make an order that the suit be dismissed: Provided that no such order shall be made if, notwithstanding such failure, the defendant attends in person or by agent when he is allowed to

appear by agent on the day fixed for him to appear and answer."; (ii) in rule 5, for the words "three months" and "one month" appearing in the sectional heading and sub-rule (1) respectively, the words "seven days" shall be substituted.

20. Amendment Of Order X :-

In the First Schedule, in Order X,-

(i) after rule 1, the following rules shall be inserted, namely:-.

"1A. Direction of the court to opt for any one mode of alternative dispute resolution. -After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1B. Appearance before the conciliatory forum or authority. -Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

1C. Appearance before the court consequent to the failure of efforts of conciliation. -Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.";

(ii) in rule 4, in sub-rule (1), for the words "may postpone the hearing of the suit to a future day", the words "may postpone the hearing of the suit to a day not later than seven days from the date of first hearing" shall be substituted.

21. Amendment Of Order Xi :-

In the First Schedule, in Order XI,-

(i) in rule 2, after the words "submitted to the court", the words "and that court shall, decide within seven days from the day of filing of the said application", shall be inserted;

(ii) in rule 15, for the words "at any time", the words "at or before the settlement of issues" shall be substituted.

22. Amendment Of Order Xii :-

In the First Schedule, in Order XII,-

- (i) in rule 2, for the word "fifteen", the word "seven" shall be substituted;
- (ii) in rule 4, second proviso shall be omitted.

23. Amendment Of Order Xiii :-

In the First Schedule, in Order XIII, for rules 1 and 2, the following rule shall be substituted, namely:-

"1. Original documents to be produced at or before the settlement of issues. -

(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed alongwith plaint or written statement.

(2) The court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents-

(a) produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory."

24. Amendment Of Order Xiv :-

In the First Schedule, in Order XIV,-

(i) in rule 4, for the words "may adjourn the framing of the "issues to a future day", the words "may adjourn the framing of issues to a day not later than seven days" shall be substituted;

(ii) for rule 5, the following rule shall be substituted, namely:-

"5. Power to amend, and strike out, issues. -

(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced."

25. Amendment Of Order Xvi :-

In the First Schedule, in Order XVI,-

(i) in rule 1, in sub-rule (4), for the words "court in this behalf",

occurring at the end, the words, brackets and figure "court in this behalf within five days of presenting the list of witnesses under sub-rule (1)" shall be substituted;

(ii) in rule 2, in sub-rule (1), after the words "within a period to be fixed", the words, brackets and figures "which shall not be later than seven days from the date of making application under sub-rule (4) of rule 1" shall be inserted.

26. Amendment Of Order Xvii :-

In the First Schedule, in Order XVII, in rule 1,-

(i) for sub-rule (1), the following shall be substituted, namely:- "

(1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit."

(ii) in sub-rule (2), for the words "may make such order as it thinks fit with respect to the costs occasioned by the adjournment", the words "shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit" shall be substituted.

27. Amendment Of Order Xviii :-

In the First Schedule, in Order XVIII,-

(i) in rule 2 for sub-rule (4), the following sub-rules shall be substituted, namely:-

"(4) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(5) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(6) No adjournment shall be granted for purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(7) The Court shall fix such time limits for the oral arguments by either of the parties in a case, as it thinks fit.";

(ii) for rule 4, the following rule shall be substituted, namely:-

"4. Recording of evidence. -(1) In every case, the examination-in-

chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as he thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule.";

(iii) rule 17A shall be omitted;

(iv) after rule 18, the following rule shall be inserted, namely:-

" 19 . Power to get statement recorded on commission. -

Notwithstanding anything contained in these rules, the Court may, instead of examining witnesses in open Court, direct their statements to be recorded on commission under rule 4A of Order XXVI."

28. Amendment Of Order Xx :-

In the First Schedule, in Order XX,-

(i) in rule 1-

(a) for sub-rule (1), the following sub-rule shall be substituted, namely:-

"(1) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose of which due notice shall be given to the parties or their pleaders:

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.";

(b) in sub-rule (2), the words "but a copy of the whole judgement shall be made available for the perusal of the parties or the pleaders immediately after the judgement is pronounced" shall be omitted;

(ii) for rules 6A and 6B, the following rules shall be substituted, namely:-

"6A. Preparation of decree. -(1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgement is pronounced.

(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the Court shall for the purposes of rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgement shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

6B. Copies of judgments when to be made available. -Where the judgement is pronounced, copies of the judgement shall be made available to the parties immediately after the pronouncement of the judgement for preferring an appeal on payment of such charges as may be specified in the rules made by the High Court."

29. Amendment Of Order Xxi :-

In the First Schedule, in Order XXI,-

(a) in rule 32, in sub-rule (5), the following Explanation shall be inserted, namely:-

"Explanation:- For the removal of doubts, it is hereby declared that the expression "the act required to be done" covers prohibitory as well as mandatory injunctions.";

(b) in rule 92, in sub-rule (2),-

(i) for the words "thirty days", the words "sixty days" shall be substituted;

(ii) after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Civil Laws (Amendment) Act, 2009.".

30. Amendment Of Order Xxvi :-

In the First Schedule, in Order XXVI, after rule 4, the following rule shall be inserted, namely:-

"4A. Commission for examination of any person resident within the local limits of the jurisdiction of the court. -Notwithstanding anything contained in these rules, any court may, in the interest of justice or for the expeditious disposal of the case or for any other reasons, issue commission in any suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.".

31. Amendment Of Order Xli :-

In the First Schedule, in Order XLI,-

(i) in sub-rule (1) of rule 1, the words and brackets "decree appealed from and (unless the Appellate Court dispenses therewith) of the judgement on which it is founded", the word

"judgement" shall be substituted;

(ii) for rule 9, the following rule shall be substituted, namely:-

"9. Registry of memorandum of appeal. -(1) The Court from whose decree an appeal lies shall entertain the memorandum of appeal and shall endorse thereon the date of presentation and shall register the appeal in a book of appeal kept for that purpose.

(2) Such book shall be called the register of appeal.";

(iii) in rule 11, for sub-rule (1), the following sub-rule shall be substituted, namely:-

"(1) The Appellate Court after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal.";

(iv) in rule 12, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) Such day shall be fixed with reference to the current business of the court.";

(v) rules 13, 15 and 18 shall be omitted;

(vi) in rule 19, the words and figures "or rule 18" shall be omitted;

(vii) in rule 22, sub-rule (3) shall be omitted.

CHAPTER 4 REPEAL AND SAVINGS

32. Repeal And Savings :-

(1) Any provision inserted in the principal Act by the High Court before the commencement of this Act shall, except in so far as such provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, Samvat 1977 -

(a) the provisions of section 26 of the principal Act and of Order IV of the First Schedule, as amended by sections 2 and 14 of this Act, shall not apply to or affect any suit pending immediately before the commencement of sections 2 and 14, and every such suit shall be tried as if section 2 and 14 had not come into force;

(b) the provisions of section 27 of the principal Act, as amended by section 3 of this Act, shall not apply to or affect any suit pending immediately before the commencement of section 3 and every such suit shall be tried as if section 3 had not come into force;

(c) the provisions of section 58 of the principal Act, as amended by section 5 of this Act, shall not apply to or affect any person

detained in the civil prison in execution of a decree before the commencement of section 5;

(d) the provisions of section 60 of the principal Act, as amended by section 6 of this Act, shall not exempt salary from attachment to the extent mentioned in clause (i) of the first proviso to sub-section (1) of section 60 before the commencement of section 6;

(e) section 89 and rules 1A, 1B and 1C of Order X of the First Schedule, as inserted in the principal Act by sections 7 and 20 of this Act, shall not affect any suit in which issues have been settled before the commencement of section 7, and every such suit shall be dealt with as if sections 7 and 20 had not come into force;

(f) the provisions of section 96 of the principal Act, as amended by section 9 of this Act, shall not apply to or affect any appeal from original decree which had been admitted before the commencement of section 9, and every admitted appeal shall be dealt with as if section 9 had not come into force;

(g) the provisions of section 102 of the principal Act as substituted by section 11 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of section 11; and every such appeal shall be disposed of as if section 5 had not come into force;

(h) the provisions of section 115 of the principal Act, as amended by section 12 of this Act, shall not apply to or affect any proceeding for revision which had been finally disposed of;

(i) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by section 16 of this Act shall not apply to in respect of any pleading filed before the commencement of section 16;

(j) the provisions of rules 9, 11, 14 and 18 of Order VII of the First Schedule, as amended or, as the case may be, substituted or omitted by section 17 of this Act, shall not apply to in respect of any proceedings pending before the commencement of section 17;

(k) the provisions of rules 1, 1A, 8, 9 and 10 of Order VIII of the First Schedule, as substituted or inserted by section 18 of this Act, shall not apply to a written statement filed and presented before the court immediately before the commencement of section 18;

(l) the provisions of rules 2 and 5 of Order IX of the First Schedule, as amended by section 19 of the Act shall not apply in respect of summons issued before the commencement of section 19;

(m) the provisions of rules 2 and 15 of Order XI of the First Schedule, as amended by section 21 of this Act, shall not apply to or affect any order passed by the court or any application

submitted for inspection to the court before the commencement of section 21 of this Act;

(n) the provisions of rules 2 and 4 of Order XII of the First Schedule, as amended or omitted, as the case may be, by section 22 of this Act, shall not affect any notice given by the party or any order made by the court before the commencement of section 22 of this Act;

(O) the provisions of rules 1 and 2 of Order XIII of the First Schedule, as substituted by section 23 of this Act, shall not affect the documents produced by the parties or ordered by the court to be produced before the commencement of section 23 of this Act;

(p) the provisions of rules 4 and 5 of Order XIV of the First Schedule, as amended by section 24 of this Act, shall not affect any order made by the court adjourning the framing of the issues and amending and striking out issues before the commencement of section 24 of this Act;

(q) the provisions of rules 1 and 2 of Order XVI of the First Schedule, as amended by section 25 of this Act, shall not affect any application made for summoning of witnesses and time granted to a party to deposit amount for summoning witnesses made by the court before the commencement of section 25;

(r) the provisions of rule 1 of Order XVII of the First Schedule, as amended by section 26 of this Act, shall not affect any adjournment granted by the court and any cost occasioned by the adjournment granted by the court before the commencement of section 26 and the number of adjournments granted earlier shall not be counted for such purpose;

(s) the provisions of rules 1, 6A and 6B of Order XX of the First Schedule, as amended or substituted by section 28 of this Act, shall not affect any application for obtaining copy of decree for filing of appeal made by a party and any appeal filed before the commencement of section 28 of this Act, and every application made and every appeal filed before the commencement of section 28 shall be dealt with as if section 28 had not come into force;

(t) the provisions of rules 1,9,11,12,13,15,18,19 and 22 of Order XLI of the First Schedule, as amended, substituted or omitted, as the case may be, by section 31 of this Act shall not affect any appeal filed before the commencement of section 31, and every appeal pending before the commencement of section 31 shall be disposed of as if section 31 of this Act had not come into force.

In the First Schedule, in Order XLI,-

(i) in sub-rule (1) of rule 1, the words and brackets "decree

appealed from and (unless the Appellate Court dispenses therewith) of the judgement on which it is founded", the word "judgement" shall be substituted;

(ii) for rule 9, the following rule shall be substituted, namely:-

"9. Registry of memorandum of appeal. -(1) The Court from whose decree an appeal lies shall entertain the memorandum of appeal and shall endorse thereon the date of presentation and shall register the appeal in a book of appeal kept for that purpose.

(2) Such book shall be called the register of appeal.";

(iii) in rule 11, for sub-rule (1), the following sub-rule shall be substituted, namely:-

"(1) The Appellate Court after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal.";

(iv) in rule 12, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) Such day shall be fixed with reference to the current business of the court.";

(v) rules 13, 15 and 18 shall be omitted;

(vi) in rule 19, the words and figures "or rule 18" shall be omitted;

(vii) in rule 22, sub-rule (3) shall be omitted.

CHAPTER 5 AMENDMENT OF THE LIMITATION ACT, SAMVAT 1995

33. Amendment Of Section 12 :-

In the Limitation Act, Samvat 1995, in section 12, in sub-section (3), the words "on which the decree or order is founded" at the end shall be omitted.