

NOTIFICATION

August 27, 2009

THE UTTARAKHAND CASE FLOW MANAGEMENT (FOR SUBORDINATE COURTS) RULES, 2009

(Published in Uttarakhand Ordinary Gazette
dated: 19 September, 2009 *Bhag 1-ka*)

No. 156/UHC/Admin. B- In exercise of the powers conferred by Article 227 of the Constitution of India, and all other powers enabling it in that behalf, the High Court of Uttarakhand hereby makes the following rules.

1. Title, application and commencement-

- (i) These rules may be called the Uttarakhand Case Flow Management (for subordinate courts) Rules, 2009.
- (ii) These rules shall apply to all suits, Civil and Criminal Proceedings before the subordinate Civil Courts/Judge Small Cause Courts, Family Courts, Criminal Courts under the control of High Court of Uttarakhand.
- (iii) These Rules shall come into force from the date of their publication in the Official Gazette.

2. Definitions- In these rules, unless the context otherwise requires-

- (i) High Court means the High Court of Uttarakhand.
- (ii) Government means the Government of the State of Uttarakhand.
- (iii) Code means the code of Civil Procedure 1908, (Act No. 5 of 1908).
- (iv) Subordinate Court means a court under the Administrative control of the High Court.
- (v) Presiding Officer means the Judge who presides over the court.
- (vi) Ministerial Officer includes the Sadar Munsarim/Munsarim/Reader/Clerk of Civil Court, Judge Small Causes Court, Family Court, Criminal Court or any other subordinate court.

3. Categorisation of suits/Cases/Appeals/Revisions and other proceedings into Tracks-

(1) The Presiding Officer of the court shall categorise the suits/cases and proceedings in his Court into track-I, Track-II and Track-III based on the nature of dispute, the quantum of evidence to be recorded and the time likely to be taken for the completion of trial of the suit, the suits shall be channeled into different tracks.

- (i) **Track-I** : Cases relating to (1) matrimonial matters (2) maintenance (3) custody of children (4) appointment of guardian and wards (5) visitation rights (6) grant of letters of administration (7) succession certificate (8) Small Causes Suits (9) Rent Control Appeals (10) revisions (11) miscellaneous cases (12) election petitions (13) Motor Accident Claims Petitions (14) money suits based solely on promotes/negotiable instruments (15) execution cases (16) miscellaneous appeals.
 - (ii) **Track-II** : (1) Original suits (other than mentioned in track-I) (2) Suits for trademarks, copyrights, patents and intellectual property rights (3) Land Acquisition References.
 - (iii) **Track-III** : Such other cases not included in Track-I to II shall be posted in Track-III.
- (2) The Presiding Officer shall endeavor to dispose of cases in Track-I within one year and the cases in tack-II & III within two years from the date of appearance or deemed appearance of defendant-respondent-opposite party.

Note-- For the period court remained vacant or proceeding remained stayed under the orders of superior court shall not be taken into account for calculating maximum period.

- (i) Where statute requires that suits/proceedings have to be completed with in a specified period then the above mentioned period for deciding the suits shall not apply, and the Court shall decide the suit with in the given statutory period. Time limit fixed for various stages of civil suits as per Code of Civil Procedure shall be adhered to.
 - (ii) **Appeals/Revisions--**
Appeals/revisions arising out of a track I shall be decided with in six months. All other appeals/revisions shall be decided with in one year. Notice shall be issued to the counsel who appears for the respondent in the Trial Court in view of Order 41 rule 14 C.P.C.
- (3) The Presiding Officer shall at intervals of every months monitor the stage of each case allotted to the different Tracks and take appropriate decision with a view to ensure that the cases are disposed of within the period fixed for each Track. The District Judge shall also discuss the above matter in the Monthly Meeting with the Presiding officers to ensure the compliance of these rules.
- (4) Once in a month, the administrative staff 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 Presiding Officer of the Court. When the matters are listed on each day, the Presiding Officer concerned may at the time of hearing of the case, take such decision as he may deem fit, in regard to each case for removing any obstacle in service of

summons, completion of pleadings etc. with a view to make the case ready for disposal.

- (5) The Presiding Officer of each court 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 data will be fed into the computer in such a manner that the Presiding Officer of each court will be able to ascertain the position and the stage of every case in every track from the computer screen. Over a period, all cases pending in his court will be covered. Where computerization is not available, the monitoring may be done manually.
- (7) The presiding Officer of each court shall monitor and control the flow or progress of every case, either from the computer or from the register or data placed before him in the above manner or in some other manner he may innovate.

4. Service of Summons/Notices and completion of pleadings:-

- (1) The summons/notices issued in suit or proceedings shall indicate maximum of 30 days for filing written statement/objection from the date of service (which for special reasons to be recorded in writing may be extended upto 90 days).
- (2)
 - (i) The plaintiff/petitioner shall file copy of the plaint, interlocutory application (if filed), list of documents along with the plaint for service on the defendant-respondent-opposite party.
 - (ii) The plaintiff/petitioner shall furnish the correct postal address of the parties in the pleadings as required under rule 14A of Order VI, in the absence of the same the office shall not take further steps until necessary compliance is made.
 - (iii) The copies of written statement or reply, together with all annexure shall be served in advance on the plaintiff.
 - (iv) The procedure indicated in clauses (i) to (iii) shall apply to all interlocutory applications as well.
- (3) When the service of notice is issued to the plaintiff/petitioner under Order V rule 9(A), the report of the service shall be filed before the Court with necessary acknowledgement of service along with affidavit.
- (4) If the service of summons/notice through courier in the panel of court is refused, the serving agent of the courier may swear an affidavit of the fact of refusal. On consideration of such affidavit, the Court may treat the service sufficient and proceed further.
- (5) The envelope of the Summons/Notice sent by Registered Post or Courier shall bear written or printed instructions to the server to deliver summons or notice to the party and in his absence, to any adult member of the family. The acknowledgement of service shall be submitted to the Court.

- (6) The party lodging caveat under Section 148A, shall furnish in the petition, the registered address for service of summons or notice and the name and address of the Advocate on whom the copy of the summons/notice is to be served.

5. Procedure on grant of interim orders—

(1) 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 may be listed even before the returnable date.

(2) If the Court passes an ad-interim ex-parte order in an interlocutory application, and the reply by the defendants is filed, 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 adjournments with a view to have undue benefit of the ad interim orders.

6. Referral to Alternate Dispute Resolution:

(1) In the hearing before the Court, after completion of pleadings, time limit for discovery and inspection, and admission and denials, of documents may be fixed, preferably restricted to 2 weeks each.

(2) 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 fact, if any, shall be filed before the said date). The Court shall thereafter, follow the procedure prescribed under the Civil Procedure Alternative Dispute resolution Rules, 2007 or under the Civil Procedure Mediation Rules, 2007 as the case may be.

7. Procedure on the failure of Alternative Dispute Resolution:

(1) 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 Court within a period of 14 days. At the said hearing before the Court, all the parties may submit the draft issues proposed by them. The suit shall be listed before the Court within 14 days thereafter for framing of issues.

(2) 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.

(3) If the parties are not keen about settlement, the Court shall frame the issues and direct the plaintiff to start examining his witnesses. 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 Court for getting the matter listed at an earlier date for disposal.

8. Appointment of Commissioners for recording of evidence and the procedures:

(1) The District Judge shall select a panel of Advocates as Commissioners for recording evidence, for the Courts in Districts and Tehsils.

(2) It is not necessary that the Court should appoint a Commissioner for recording evidence in every case. 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 evidence and direct that the matter be listed for further orders fifteen days after the Commissioner files his report with the evidence. The Court may initially fix a 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 the Court may know whether the parties are cooperating with the Commissioner and whether the recording of evidence is getting unnecessary prolonged.

(3) The Court shall appoint an Advocate on the panel, for recording evidence on Commission.

(4) The Court shall determine the remuneration of the Commissioner and the incidental charges.

(5) Until the panel of Commissioners is published by the District Judge, the Court may appoint a Commissioner in accordance with provisions of Order XXVI.

(6) The Commissioner shall intimate the court the date, time and place when he intends to record the evidence and on that date the Presiding Officer shall direct one or more official (as the case may be) of the court to take the record of the case, necessary for recording the evidence, at the given date, time and place.

(7) The Official(s) shall ensure safe custody of the case file and documents delivered to his custody.

9. Costs : So far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory in 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. Reasons must be assigned for making costs easy. Costs should be assessed according to rule in force. If any 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.

10. Proceedings for Perjury : When the Presiding officer while pronouncing the judgment expresses in the judgment that the party/witness has willfully given false evidence, he shall consider, at

least in grave cases whether prosecution should be initiated for Perjury and order prosecution accordingly.

11. **Adjournment** : The amendments to the Code have restricted the number of adjournments 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 clauses (b) of provision to Rule 2 of Order XVII. The Court shall impose costs as specified in Rule 2 of Order XVII.
12. **Miscellaneous Applications** : The proceedings in a suit shall not be stayed on the filing of any Miscellaneous Applications in the course of suit unless the court in its discretion expressly stays the proceedings in the suit.
13. **First Appeals to Appellate (Subordinate) Courts:-**
 - (1) **Service of Notice of Appeal-** First Appeal being appeals on questions of fact and law, Courts are generally inclined to admit the appeal and it is only in exceptional cases that the appeal is rejected under Order XLI Rule 11 at the admission stage.
 - (i) In view of the amended Code, a copy of the appeal is required to be filed in the trial Court. But a party can file the appeal in the Appellate Court immediately for obtaining interim orders.
 - (ii) In addition to the process for normal service as per the Code, 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 Trial Court itself so as to enable them to inform the parties to appear if they so choose even at the first hearing stage.
 - (2) **Filing of Documents-** The Appellant shall, on the appeal being admitted, file all the essential papers within such period as may be fixed by the Appellate Court for the purpose the appellate Court understanding the scope of the dispute and for the purpose of passing interlocutory orders.
 - (3) **Fixation of time limits in interlocutory matters-** Wherever 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, if any, may be filed within two weeks form the receipt of the lasty reply.
 - (4) **Procedure on grant of interim-orders-** (i) 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.

(ii) If the Court passes an ad-interim ex-parte order, and if the reply is filed by the Respondents and it, 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. This is intended to see that those who have obtained ad-interim order do not procrastinate in filing replies.

- (5) **Filing of Written Submission-** Both the appellants and the respondents shall be required to submit their written submissions one week before the commencement of the arguments in the appeal. The cause-list should indicate if written submissions have been filed or not. 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 submissions.
- (6) **Costs-** Awarding of costs must be treated generally as mandatory in as much as it is the liberal attitude if the Costs in not awarding costs that has led to frivolous appeals being filed in the costs. 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.

14. Application/Petition under Special Acts- The Practice direction in regard to Original Suits should mutatis mutandis apply in respect of such applications/ petitions filed under any Special Acts like the Industrial Disputes Act, Hindu Marriage Act and Indian Succession Act etc.

15. Criminal Trial and Criminal Appeals to Subordinate Courts:-

- (1) **Criminal Trials-** Criminal Trials should be channeled based on gravity of offence, sentence and whether the accused is on bail or in jail in different tracks.
- (2) **Sessions Trials and Special Trials:-**
- (i) **Track-I :** Capital punishment, Rape and cases involving sexual offences or dowry deaths.
 - (ii) **Track-II :** Other cases where the accused is not granted bail or in jail-under trial cases.
 - (iii) **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, offences of sensitive nature etc.
 - (iv) **Track-IV :** Offences, which are tried by special courts such as NDPS, Prevention of Corruption Act, etc.
 - (v) **Track-V :** All other offences.
- (3) The endeavour should be to complete Track-I cases within a period of one year, Track-II and Track-III cases within eighteen

months and Track-IV & V within 15 months from the date of submission of the charge sheet in the court.

- (4) **Criminal Appeals-** (i) 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.
- (ii) In respect of appeals filed against acquittals, steps for appointment of amicus curie or State Legal Aid counsel in respect of the accused who do not have a lawyer of their own choice should be undertaken by the Presiding Officer/ (State Legal Services Authority).
- (iii) 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 other party to appear if they so choose even at the first hearing stage.

16. Note- Whenever there is any inconsistency between these rules and the provisions of either the Code of Civil Procedure, 1908 or the Code of Criminal Procedure 1973 of General Rules (Civil) 1957, General Rules (Criminal) 1977 or any other Statutes, the provisions of such Codes, Rules and Statutes shall prevail.