

### **Decree in Appeal**

**35. Date and contents of decree.--**(1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

**Judge dissenting from judgment need not sign decree.** Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

**High Court Amendments, Lahore.** Add the following to sub-rule (4): "Provided also in the case of the High Court, that the Registrar, or such other officer as may be in charge of the Judicial Department from time to time, shall sign the decree on behalf of the Judge or Judges who passed it; but that such Registrar, or such officer, shall not sign such decree on behalf of a dissenting Judge".

**36. Copies of judgment and decree to be furnished to parties.**--Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

**37. Certified copy of decree to be sent to Court whose decree appealed from.**--A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

**High Court Amendments, N.W.F.P.** Add the following rule as Rule 38:

"38. (1) An address for service filed under Order VII, Rule 19, or Order VIII, Rule 11, or subsequently altered under Order VII, Rule 22, or Order VIII, Rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition.

(2) The notice of appeal, and other processes connected with proceedings therein, shall issue to the addresses mentioned in cl. (1) above, and service effected at such addresses shall be as effective as if it had been made personally on the appellant or respondent, as the case may be."

(3) Rules 21, 22, 23, 24 and 25 of Order VII, shall apply so far as may be, to appellate proceedings.

**Lahore.** Add the following as Rule 38:

"38. (1) An address for service filed under Order VII, Rule 19, or Order VIII, Rule 11, or subsequently altered under Order 7, Rule 22, or Order 8, Rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition.

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(2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below and notices and processes shall issue from the Appellate Court to such addresses.

(3) Rules 21 and 22, of Order VII shall apply so far as may be, to appellate proceedings."

Sindh. Add the following as Rule 38:

"38. (1) An address for service filed under Order VII, Rule 19, or Order VIII, Rule 11, or subsequently altered under Order VII, Rule 24, or Order VIII, Rule XXII, shall hold good during all appellate proceedings arising out of the original suit or petition subject to any alteration under sub-rule (3).

(2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below and notices and processes shall issue from the Appellate Court to such addresses.

(3) Rules 21 to 25 of Order VII, shall apply, so far as may be, to appellate proceedings."

**ORDER XLIII**  
**APPEALS FROM ORDERS**

**1. Appeals from orders.**--An appeal shall lie from the following orders under the provisions of Section 104; namely:--

- (a) an order under Rule 10 of Order VII returning a plaint to be presented to the proper Court;
- (b) an order under Rule 10 of Order VIII pronouncing judgment against a party;
- (c) an order under Rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

- (d) an order under Rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;
- (e) an order under Rule 4 of Order X pronouncing judgment against a party;
- (f) an order under Rule 21 of Order XI;
- (g) an order under Rule 10 of Order XVI for the attachment of property;
- (h) an order under Rule 20 of Order XVI pronouncing judgment against a party;
  - (i) an order under Rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
  - <sup>1</sup>[(ii) an order under Rule 62 or Rule 103 of Order. XXI relating to the right, title or interest of the claimant or objector in attached property;]
- (j) an order under Rule 72 or Rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (k) an order under Rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;
- (l) an order under Rule 10 of Order XXII giving or refusing to give leave;
- (m) an order under Rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction;
- (n) an order under Rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (o) an order <sup>2</sup>[under Rule 2, Rule 4 or Rule 7] of Order XXXIV refusing to extend the time for the payment of mortgage-money;
- (p) orders in interpleader-suits under Rule 3, Rule 4 or Rule 6 of Order XXXV;
- (q) an order under Rule 2, Rule 3 or Rule 6 of Order XXXVIII;
- (r) an order under Rule 1, Rule 2, Rule 4 of Rule 10 of Order XXXIX;

1. Added by Ordinance XII of 1972.

2. Subs. by the Transfer of Property (Amendment) Supplementary Act, 1930 (16 of 1930), S. 2, for "under Rule, 3 or Rule, 8".

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- (s) an order under Rule 1 or Rule 4 of Order XL;
  - (t) an order of refusal under Rule 19 of Order XLI to re-admit, or under Rule 21 of Order XLI to re-hear, an appeal;
  - (u) an order under Rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

**High Court amendment, Lahore.** In clause (u) after the word and figure Rule 23, add "or Rule 23A." (3.8.1928)

**Sindh.** Substitute the words "any order" for the words "an order under Rule 23 of Order XLI" appearing in clause (u) of Rule 1.

- (v) an order made by any Court other than a High Court refusing the grant of a certificate under Rule 6 of Order XLV;
- (w) an order under Rule 4 of Order XLVII granting an application for review.

### COMMENTS

**Revision.** Where the valuation of the subject matter for the purpose of jurisdiction is fixed at Rs. 400/- by the plaintiff, revision is to be filed before the lower Court. [2001 CLC 579].

**Reader of Court.** Reader of Court is not competent to pass any order requiring any party to pay process fee within certain period. [PLD 1998 Lah. 342].

**Dismissal of suit for non-prosecution.** Interim injunction can only be granted in a pending case and Court not grant an injunction after suit had been dismissed in default. [PLJ 2013 Lahore 357]

**Procedure.--**The rules of Order XLI shall apply, so far as may be, to appeals from orders

<sup>3</sup>[3. Notice before presentation of appeal.--(1) Where an appeal against an order is preferred during the pendency of a suit, the appellant shall, before presenting the appeal, give notice of such appeal to the respondent or his advocate by delivering a copy of the memorandum and grounds of appeal along with a copy of the order appealed against <sup>4</sup>[either personally or through registered post acknowledgment due and the postal or other receipt shall be filed with the memo. of appeal for the record of the Appellate Court.]

(2) On receipt of notice referred to in sub-rule (1), the respondent may, with the permission of the Court, appear before it and contest the appeal and may be awarded costs on dismissal of the appeal *in limine*.]

3. Rule 3 added by Ordinance, X of 1980.

4. Subs. by Civil Law Reforms Act, 1994.

## COMMENTS

On receipt of the notice referred to in sub-rule (1) the respondent may, with the permission of the Court, appear before it and contest the appeal with a view to getting it dismissed in limine, in case he succeeds in doing so he may even be awarded costs. [PLD 1983 SC 683].

Appeal was filed without notice but the respondent appeared at the in limine stage before appellate Court where the instant appeal was initially erroneously filed would make it clear and obvious that the respondent had the full knowledge of the intention of the appellants to file an appeal against the order impugned and also the grounds of appeal, hence the provision of O. XLIII, R. 3, CPC stood substantially complied with. [PLJ 2009 Lahore 883]

Notice before filing appeal. Appeal without notice, held not maintainable where respondents showed that they suffered material prejudice. [PLJ 2009 Lahore 883]

**[4. Application of Rule 3.--**The provisions of Rule 3 shall, *mutatis mutandis*, apply to all applications filed before an Appellate Court during the pendency of a suit.]

## COMMENTS

**Application.** Provisions of O. XLIII, R. 4 are not applicable to revision under S. 115 of the Code. [1985 CLC 2936; 1984 CLC 3270].

## ORDER XLIV

### PAUPER APPEALS

**1. Who may appeal as pauper.--**Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable:

**Procedure on application for admission of appeal.--**Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

**2. Inquiry into pauperism.--**The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under

1. Rule 4 added by Ordinance, X of 1980.

the orders of the Appellate Court by the Court from whose decision the appeal is preferred:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

## ORDER XLV

### APPEALS TO THE <sup>2</sup>[SUPREME COURT]

*[See Sections 109 to 112]*

1. "Decree" defined.--<sup>3</sup>[In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a judgment or a final order.]

*[Decree-See notes under S. 2(2), Code of Civil Procedure]*

#### COMMENTS

**Supreme Court Rules 1956-Amendment.** Amendments made in O. XII of the Supreme Court Rules 1956 do not repeal the provision of this order. *[PLD 1978 Lah. 62].*

**Final order.** Final order must be an order as defined in S. 2(14) i.e. it must be a formal expression of a decree of Civil Court. *[AIR 1957 All 505].*

2. **Application to Court whose decree complained of.** Whoever desires to appeal to <sup>4</sup>[the Supreme Court] shall apply by petition to the Court whose decree is complained of.



## COMMENTS

**Certificated appeal.** Issuance of certificate is mandatory requirement. [PLD 1978 S.C. (AJ&K) 42]. Petition made before High Court is an important document, must contain all the grounds on which such certificate is sought. It has to be ultimately treated as memo. of appeal. [2002 SCMR 540].

**3. Certificate as to value or fitness.--(1)** <sup>5</sup>[A petition made under Rule 2 shall briefly state the grounds of appeal and pray for a certificate].

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2. Subs. by P.O. 1961 (1 of 1961). Art. 2 and Sch. (w.e.f. the 23rd March, 1956) for "King-in-Council".
  3. Subs. by P.O. 4 of 1975.
  4. Subs. by P.O. 1961 (1 of 1961) (w.e.f. the 23rd March, 1956), for "His Majesty-in-Council".
  5. Subs. by P.O. 4 of 1975.

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite-party to show cause why the said certificate should not be granted:

<sup>4</sup>[Provided that no notice shall be directed to be served on or given to the opposite-party or to the legal representative of a deceased opposite-party in a case where such opposite-party did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court].

<sup>4</sup>[(3) The Court may, if the opposite-party in response to the notice issued under sub-rule (2) appears, after hearing both the parties, or if the opposite-party does not appear in response to such notice, then after hearing the party making the petition, grant or refuse the certificate.

(4) If on the date fixed for the hearing, the party making the petition does not appear and the opposite-party appears in response to such notice or if both the parties do not appear on such date, the petition shall be dismissed.]

**4. Consolidation of suits.**--For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated, but suit decided by separate judgment shall not be consolidated, notwithstanding that they involve substantially the same question for determination.

**5. Remission of dispute to Court of first instance.**--In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to the Supreme Court, the Court to which a petition for a certificate is made under Rule 2 may, if it thinks fit, refer such dispute for report to the Court of first instance, which last-mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.

**<sup>6</sup>6. [Effect of refusal of certificate]**

**7. Security and deposit required on grant of certificate.**--Where the certificate is granted, the applicant shall, within <sup>7</sup>[ninety days or such further period, not exceeding sixty days, as the Court may upon cause shown allow] from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whichever is the later date--

6. Omitted by P.O. 4 of 1975.

7. Subs. by the Limitation and Code of Civil Procedure (Amendment) Act, 1920 (26 of 1920). S. 2

- (a) furnish security <sup>8</sup>[in cash or in Government securities] for the costs of the respondent, and
- (b) deposit the amount required to defray the expense of translating, transcribing, indexing <sup>9</sup>[, printing] and transmitting to <sup>10</sup>[the Supreme Court] a correct copy of the whole record of the suit, except-
- (1) formal documents directed to be excluded by any <sup>11</sup>[Rule of the Supreme Court] in force for the time being;
  - (2) papers which the parties agree to exclude;
  - (3) accounts, or portions of accounts, which the office empowered by the Court for that purpose considered unnecessary, and which the parties have not specifically asked to be included; and
  - (4) such other documents as the High Court may direct to be excluded:

<sup>12</sup>[Provided that the Court at the time of granting of certificate may, after hearing any opposite-party who appears, order on the ground of special hardship that some other form of security may be furnished:

Provided, further, that no adjournment shall be granted to an opposite-party to contest the nature of such security]

<sup>13</sup>[\*\*\*\*\*]

High Court Amendments, Sindh. Insert the following as Rule 7-A.

"7A. No such security as is mentioned in cl. (a) of sub-rule (1) Rule 7, shall be required from the Secretary of State of India in Council or, where the Local Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity."

**8. Admission of appeal and procedure thereon.**--Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall-

- (a) declare the appeal admitted,

8. Ins. by the Limitation and Code of Civil Procedure (Amendment) Act, 1920 (26 of 1920), S. 3.

9. Ins. by the P.O. 1961 (1 of 1961), Art. 2 and Sch. (w.e.f. the 23rd March, 1956).

10. Subs. *ibid.* for "His Majesty-in-Council".

11. Subs. *ibid.* for "Order of His Majesty-in-Council".

12. Ins. by the Limitation and Code of Civil Procedure (Amendment) Act, 1920 (26 of 1920), S. 3.

13. Sub-R. (2) omitted by the P O 1961 (1 of 1961), Art. 2 and Sch. (w.e.f. the 23rd March, 1956). This, sub-rule was amended by the Federal Laws (Revision and Declaration) Act 1951 (26 of 1951), S. 4 and Third Sch.

(b) give notice thereof to the respondent,

(c) transmit to <sup>14</sup>[the Supreme Court] under the seal of the Court a correct copy of the said record, except as aforesaid, and

(d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

**9. Revocation of acceptance of security.**--At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

**159-A. [Power to dispense with notices in case of deceased parties.]**

**10. Power to order further security or payment.**--Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to the <sup>16</sup>Supreme Court, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

**11. Effect of failure to comply with order.**--Where the appellant fails to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in his behalf of the <sup>17</sup>Supreme Court, and in the meantime execution of the decree appealed from shall not be stayed.

**12. Refund of balance deposit.**--When the copy of the record, except as aforesaid, has been transmitted to the <sup>18</sup>Supreme Court, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under Rule 7.

14. See note 1 under R. 2 supra.

15. Rule 9-A Ins. by Act 26 of 1920, S. 4; and omitted by P.O. 4 of 1975.

16. Subs. by P.O. 1961 (1 of 1961) Art. 2 & Sched. w.e.f. 23rd March, 1956.

17. Subs. by P.O. 1961 (1 of 1961) Art. 2 & Sched. w.e.f. 23rd March, 1956.

18. Subs. by P.O. 1961 (1 of 1961) Art. 2 & Sched. w.e.f. 23rd March, 1956.

**13. Powers of Court pending appeal.**--Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,--

(a) impound any movable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which <sup>19</sup>the Supreme Court, may make on the appeal, or

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or any order which <sup>20</sup>the Supreme Court may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

**14. Increase of security found inadequate.**--Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the Court--

(a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security;

(b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

19. Subs. by P.O. 1961 (1 of 1961) Art. 2 & Sched. w.e.f. 23rd March, 1956.

20. Subs. by P.O. 1961 (1 of 1961) Art. 2 & Sched. w.e.f. 23rd March, 1956.

15. Procedure to enforce orders of Supreme Court.--(1) Whoever desires to obtain execution of any order <sup>21</sup>[the Supreme Court] shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to <sup>22</sup>[the Supreme Court] was preferred.

(2) Such Court shall transmit the order of <sup>23</sup>[the Supreme Court] to the Court which passed the first decree appealed from, or to such other Court as <sup>24</sup>[the Supreme Court] by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3) When any monies expressed to be payable in British currency are payable in <sup>25</sup>[Pakistan] under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed at the date of the making of the order <sup>26\*\*\*</sup> for the adjustment of financial transactions between the <sup>27</sup>[\* Central Government and His Majesty's Government in the United Kingdom].

<sup>28</sup>[(4) Unless <sup>29</sup>[the Supreme Court] is pleased otherwise to direct, no order of <sup>30</sup>[the Supreme Court] shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.]

21. Subs. by P.O. 1961 (1 of 1961), Art. 2 and Sch. (w.e.f. the 23rd March, 1956), for "His Majesty-in-Council".

22. Subs. by P.O. 1961 (1 of 1961), Art. 2 and Sch. (w.e.f. the 23rd March, 1956), for "His Majesty-in-Council".

23. Subs. by P.O. 1961 (1 of 1961), Art. 2 and Sch. (the 23rd March, 1956), for "His Majesty-in-Council".

24. Subs. by P.O. 1961 (1 of 1961), Art. 2 and Sch. (the 23rd March, 1956), for "His Majesty-in-Council".

25. Subs. by the A.O., 1949, for "India".

26. The words "by the Secretary of State for India in Council with the concurrence of the Lords Commissioners of His Majesty's Treasury" omitted by the A.O., 1937.

27. Subs. by the A.O., 1949 for "Imperial and the Indian Government". The redundant word "the" has been omitted in printing.

28. Subs-rule (4) ins. by the Indian Limitation and C.P.C. (Amdt) Act, 1920 (26 of 1920), Section 5.

29. Subs. by P.O. 1961 (1 of 1961), Art. 2 and Sch. (the 23rd March, 1956), for "His Majesty-in-Council".

30. Subs. by P.O. 1961 (1 of 1961), Art. 2 and Sch. (the 23rd March, 1956), for "His Majesty-in-Council".

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**16. Appeal from order relating to execution.**--The orders made by the Court which executes the order of <sup>1</sup>[the Supreme Court], relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

**17. Appeals to the Federal Court.**--*Omitted by the Federal Court Act, 1941 (XXI of 1941), S. 2.]*

**High Court Amendments, Lahore.** Add the following as Order 45-A.