

Order-45 Appeals to the Supreme Court

CONTENTS

1. "Decree" defined
2. Application to Court whose decree complained of
3. Certificate as to value or fitness
4. Effect of refusal of certificate
5. Security and deposit required on grant of certificate
6. Admission of a appeal and procedure thereon
7. Revocation of acceptance of security
- 7A. Power to dispense with notices in case of deceased parties
8. Power to order further security or payment
9. Effect of failure to comply with order
10. Refund of balance deposit
11. Powers of Court pending appeal
12. Increase of security, found inadequate
13. Procedure to enforce orders of the Supreme Court
14. Appeal from order relating to execution
15. Appeals to Federal Court

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1. "Decree" defined :-

In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

2. Application to Court whose decree complained of :-

1[(1)] Whoever desires to appeal to **2**[the Supreme Court] shall apply by petition to the Court whose decree is complained of.

3[(2) Every petition under sub-rule (1) shall be heard as expeditiously as possible and endeavour shall be made to conclude the disposal of the petition within sixty days from the date on which the petition is presented to the Court under sub-rule (1).]

State Amendment Uttar Pradesh.-In its application to the State of Uttar Pradesh in Order XLV, rule 2 after sub-rule (2) the following sub-rule (3) has been inserted: "(3) Notwithstanding anything contained in sub-rule (1), whoever desires to appeal to the Supreme Court, may apply orally to the Court whose decree is to

be complained of, immediately before or after the pronouncement of the judgment by the Court, and for a certificate contemplated in sub-rule (1) of rule 3, and the Court may either grant or refuse the certificate, or direct the applicant to file a petition as required by sub-rule (1): Provided that if an oral application is entertained and rejected, no written- petition under sub-rule (1) shall lie" ⁴High Court Amendments Bombay.-The following new sub-rule (3) of rule 2 of Order XLV shall be inserted as under : "(3) Application to Court whose decree is complained of.-(1) Whoever desires to appeal to the Supreme Court shall apply by petition to the Court whose decree is complained of. (2) Notwithstanding anything contained in sub-rule (1) a party desiring to appeal to the Supreme Court may apply orally immediately after the pronouncement of the judgment by the Court and the Court may grant or refuse leave to the party to appeal to the Supreme Court or direct the party to file a petition as required by sub-rule (1): Provided however, that if an oral application for leave under sub-rule (2) is made and rejected, no written petition under sub-rule (1) shall lie." ⁵Patna.-In its application to the State of Bihar in Order XLV, rule 2 has been substituted as under: "2. Application to Court whose judgment, decree or final order is complained of.-(1) Whoever desires to appeal to the Supreme Court may apply by petition to the Court whose judgment, decree or final order is complained of. (2) Notwithstanding anything contained in sub-rule (1) a party desiring to appeal to the Supreme Court may apply orally immediately after the pronouncement of the judgment of final order by the Court and the Court may grant or refuse leave to the party to appeal to the Supreme Court or allow the party to file a petition as required by sub-rule .1): Provided that if an oral application for leave under the sub-rule (2) is made and rejected, no written petition under sub-rule (1) shall lie." ⁶

1. Re-numbered by Act 104 of 1976, Sec. 91 (w.e.f. 1st February, 1977).
2. Subs by the A. O., 1950, for "His Majesty-in-Council".
3. Ins. by Act 104 of 1976.
4. Ins. by Uttar Pradesh Act No. 57 of 1976, Sec. 14 (w.e.f. 1st January, 1977).
5. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).
6. Ins. by No. 395-R dated 17th December, 1977 (26th Agrahayana, 1899).

3. Certificate as to value or fitness :-

1

[(1) Every petition shall state the grounds of appeal and pray for a certificate-

(i) that the case involves a substantial question of law of general importance; and

(ii) that in the opinion of the Court the said question needs to be decided by the Supreme Court.

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

High Court Amendment Bombay.-The following sub-rule (2) of rule 2 of Order XLV shall be substituted as under: "(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, unless it thinks fit to refuse the certificate." ²³ [* * *]

1. Subs. by Act 49 of 1973, Sec. 4.

2. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).

3. Rules 4 and 5 omitted by Notifn. No. P. 0102/77.

4. Effect of refusal of certificate :-

Where such certificate is refused, the petition shall be dismissed.

5. Security and deposit required on grant of certificate :-

(1) Where the certificate is granted, the applicant shall, within ¹[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,-

(a) furnish security ²[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, ³[printing] and transmitting to the ⁴[the Supreme Court] a correct copy of the whole record of the suit, except-

(1) formal documents directed to be excluded by any ⁵[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 officer empowered by the Court for that purpose considers 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: ⁶[Provided that the Court at the time of granting the 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] ⁷[* * *]

High Court Amendment Bombay.-After rule 7 of Order XLV new rule 7-A shall be inserted as under: "7-A. Security not to be demanded from Union or State Government or Government servant defended by Government.-No such security as is mentioned in Cl. (a) of sub-rule (1) of rule 7 above shall be required from the Union of India or a State Government or where Government has undertaken the defence of the suit from any public officer send in respect of an act alleged to have been done by him in his official capacity." ⁸

1. Subs. by Act 26 of 1920, Sec. 3, for "six months."

2. Ins. by Act 26 of 1920 .

3. Ins. by the A. O.. 1950.

4. Subs. by the A. O.. 1950., for "His Majesty-in-Council".

5. Subs. by the A. O.. 1950., for "order of His Majesly-in-Council".

6. Ins. by Act 26 of 1920. Sec. 3.

7. Sub-rule (2) omitted by the A. O., 1950.

8. Vide Notifn. No. P 0102/77 (w.e.f. 1st October 1983).

6. Admission of a 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,

(b) give notice thereof to the respondent,

(c) transmit to ¹ [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.

1. Subs. by the A. O.. 1950., for "His Majesty-in-Council".

7. 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.

7A. Power to dispense with notices in case of deceased parties :-

Nothing in these rules requiring any notice to be served on or given to an opposite-party or respondent shall be deemed to require any

notice to be 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 is complained of or at any proceedings subsequent to the decree of that Court: Provided that notices under sub-rule (2) of rule 3 and under rule 8 shall be given by affixing the same in some conspicuous place in the court-house of the Judge of the District in which the suit was originally brought, and by publication in such newspapers as the Court may direct.

8. 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 ¹ [the 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.

1. Subs. by the A. O., 1950, for "His Majesty-in-Council"

9. 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 this behalf of [the Supreme Court], and in the meantime execution of the decree appealed from shall not be stayed.

10. Refund of balance deposit :-

When the copy of the record, except as aforesaid, has been transmitted to ¹ [the Supreme Court], the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

1. Subs. by the A. O., 1950, for "His Majesty-in-Council"

11. Powers of Court pending appeal :-

(1) 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 moveable 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 ¹[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 of ²[any decree or order] which ¹ [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.

1. Subs. by the A. O., 1950, for "His Majesty-in-Council"

2. Subs. by the A. O., 1950., for "any order".

12. Increase of security, found inadequate :-

(1) 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 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 subject-matter of the appeal as it thinks fit.

13. Procedure to enforce orders of the Supreme Court :-

(1) Whoever desires to obtain execution of ¹[any decree or order] of ²[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 ²[the

Supreme Court] was preferred.

(2) Such Court shall transmit the ²[decree or order] of ⁵[Supreme Court] to the Court which passed the first decree appealed from, or to such other Court as ²[Supreme Court] by such ³[decree or 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 ²[decree or order] is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

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[(4) [Unless the Supreme Court otherwise directs, no decree or order of that 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 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.]

High Court Amendment Bombay.-The following rule 15 of Order XLV shall be substituted as under: "15. Procedure to enforce order of the Supreme Court.-(1) (a) Any decree passed or order made by the Supreme Court in exercise of the appellate jurisdiction including any order as to the costs and incidental to any proceedings in that Court shall be enforceable in accordance with the provisions of law for the time being in force relating to the enforcement of the decrees or orders of the Court or Tribunal from which the appeal to the Supreme Court was preferred or sought to be preferred. (b) The costs incurred in the High Court as incidental to the Supreme Court appeal including the costs in the application for leave to appeal to the Supreme Court shall be recoverable, where awarded, by execution of the order of the High Court in the same manner in which the decree or order of the High Court from which the appeal to the Supreme Court was preferred or sought to be preferred would have been executed. (2) Unless the Supreme Court otherwise directs no decree or order of that 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 of 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. "

1. Subs. by the A. O., 1950, for "any order".

2. Subs. by the A. O., 1950, for "His Majesty-in-Council"

5. Subs. by the A. O., 1950., for "any order".

14. Appeal from order relating to execution :-

The orders made by the Court which executes the [decree or order] of [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.

15. Appeals to Federal Court :-

Repealed by Federal Court Act, 1941 (21 of 1941), Sec. 2.