



গণপ্রজাতন্ত্রী বাংলাদেশ সরকার  
আইন কমিশন  
বিচার প্রশাসন প্রশিক্ষণ ইনস্টিটিউট ভবন  
১৫ কলেজ রোড, ঢাকা-১০০০

**বিষয়ঃ The Code of Civil Procedure, 1908 (Act NO.V of 1908) তথা দেওয়ানি কার্য বিধির বিভিন্ন আদেশের কিছু বিধি অন্তর্ভুক্ত না হওয়া এবং উক্ত বিধি সমূহ সংকলন সংক্রান্ত গবেষণা প্রতিবেদন ও সুপারিশ।**

বাংলাদেশে বর্তমানে প্রচলিত The Code of Civil Procedure, 1908 (Act NO.V of 1908) তথা দেওয়ানি কার্যবিধির Bare Act অর্থাৎ মূলপাঠের আদেশাংশে (Order) ১৯৪৭ সালের পূর্বে কোলকাতা হাইকোর্ট কর্তৃক সংযোজিত মোট ১৯টি আদেশের ৮২টি বিধি অন্তর্ভুক্ত করা হয় নাই মর্মে আইনজীবী, বিচারকগণের নিকট থেকে আইন কমিশন অভিযোগ পাওয়ায় বাংলাদেশ কোডে সংকলিত দেওয়ানি কার্যবিধিতে ১৯৪৭ সনের পূর্বে কলকাতা হাইকোর্ট এবং দেশ স্বাধীনের পূর্বে, পূর্ব পাকিস্তান হাইকোর্ট কর্তৃক বিভিন্ন সময়ে জারিকৃত বিধি সমূহের অন্তর্ভুক্তি না হওয়া সম্পর্কিত বিষয় নিয়ে রচিত।

গবেষণামূলক কাজ সম্পাদনের ক্ষেত্রে বাংলাদেশ কোডে সংকলিত দেওয়ানি কার্যবিধিতে বিভিন্ন বিধান খুঁজতে গিয়ে এতে কিছু অসংযোগ ও বিচ্যুতি আইন কমিশনের নজরে আসায় কমিশন স্বউদ্যোগে সমীক্ষণ কাজটি সম্পাদন করেছে যাতে এক্ষেত্রে সৃষ্ট আইনি বিচ্যুতি নিরসন হয় এবং কোডে সংকলিত দেওয়ানি কার্যবিধি ত্রুটি বিমুক্ত হয়ে Bangladesh Laws (Revision and Declaration) Act, 1973 এর ৬ ধারার নির্দেশ মতে বাংলাদেশে প্রয়োগযোগ্য আইন সমূহের সঠিক মুদ্রণ সমাহারে সমৃদ্ধ ও নির্ভরযোগ্য হয়।

**দেওয়ানি কার্য বিধির বিন্যাসঃ** দেওয়ানি কার্য বিধির কাঠামো বিন্যাস দুটি অংশে বিভক্ত:

প্রথম অংশ ধারাসমূহ সম্বলিত মূলকাঠামো যা আদালতের এখতিয়ার প্রয়োগে প্রকৃতিগত ভাবে মৌলিক নীতি সংক্রান্ত এবং আইনসভা বা উচ্চ আদালতের রায় ব্যতীত সংশোধন অযোগ্য।

দ্বিতীয় অংশ ১ম তফসিল দ্বারা সাজানো। ১ম তফসিলে বর্তমানে ৫০টি আদেশে বিভিন্ন নিয়ম বা বিধি অন্তর্ভুক্ত আছে যা মূলতঃ এখতিয়ার চর্চার প্রক্রিয়া বা পদ্ধতি সম্পর্কে বিস্তারিত দিক নির্দেশনা।

দেওয়ানি কার্যবিধি, ১৯০৮ সংক্রান্ত খসড়া বিলে এরূপ শ্রেণী বিন্যাসে সজ্জিত করণের কারণ বর্ণনায় Sir Earle Richards এর নেতৃত্বে গঠিত বিশেষ কমিটির সদস্য ড. রাশবিহারী ঘোষ বলেছেন যে, বিধি গুলিকে সময়ের চাহিদা অনুযায়ী উপযোগী ও এর ত্রুটি চিহ্নিত হওয়া মাত্রই দুরীকরণে সহজ পরিবর্তনক্ষম করার লক্ষ্যে

হাইকোর্টকে বিধি প্রণয়নের ক্ষমতা দেয়া হয়েছে, (কোডের ১২২ ধারা দ্রঃ)। অপরদিকে কার্যবিধির ১২১ ধারায় বলা হয়েছে যে, ১ম তফসিলে প্রণীত বিধিসমূহ কোডে উল্লেখিত ধারা সমূহের ন্যায় আইনি মর্যাদায় সমগুরুত্বপূর্ণ ও প্রভাবসম্পন্ন। এই অধিক্ষেত্র বলে কোলকাতা হাইকোর্ট এবং ভূতপূর্ব ঢাকা হাইকোর্ট বিভিন্ন সময় গেজেট প্রজ্ঞাপনের মাধ্যমে অনেক বিধি প্রণয়ন ও পরিবর্তন করেছে যা দেওয়ানি কার্যপদ্ধতিতে অবশ্যই অনুসরণ ও প্রতিপালন করতে হবে। ১৯৪৭ সালের ১৪ই আগস্টের পূর্বে কোলকাতা হাইকোর্ট কর্তৃক প্রণীত ও পরিবর্তিত বিধি সমূহ হাইকোর্ট অব (বেঙ্গল) অর্ডার, ১৯৪৭ অনুসারে বাংলাদেশে প্রযোজ্য। এছাড়া দি ইন্ডিয়ান ইন্ডিপেন্ডেন্টস এ্যাক্ট, ১৯৪৭ এর ১৮(৩) ধারা, পাকিস্তানের ১৯৫৬ এবং ১৯৬২ সনের শাসনতন্ত্রের যথাক্রমে ২২৪ ও ২২৫ অনুচ্ছেদ ও গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের ১৪৯ অনুচ্ছেদ অনুসারে ঐগুলো বাংলাদেশে বলবৎ যোগ্য আইন। আর এখানেই বাংলাদেশ কোডে সংকলিত দেওয়ানি কার্যবিধিতে ঐসকল অনেক বিধির অসংযোগ ও বিচ্যুতি সংশোধনের গুরুত্ব নিহিত।

উল্লেখ্য যে, বিভিন্ন সময় কোলকাতা হাইকোর্ট ও ঢাকা হাইকোর্ট কর্তৃক সংশোধিত বিধিসমূহ পাকিস্তান কোড ও বাংলাদেশ কোডে সংকলিত দেওয়ানি কার্যবিধির টেক্সট-এ অন্তর্ভুক্ত হয় নাই। ঐ সকল বাদ পড়া বিধি সমূহ বাংলাদেশ কোডে সংকলিত দেওয়ানি কার্যবিধি-তে সংযোজন করার সুপারিশ করা হলো।

#### ব্যবহৃত পুস্তকঃ-

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১৯৪৭ সনের পূর্বে কলকাতা হাইকোর্ট বিভিন্ন গেজেট নোটিফিকেশনের মাধ্যমে The Code of Civil Procedure, 1908 এর বিধি সমূহে বিভিন্ন সংশোধনী আনয়ন করেছেন। কিন্তু ১৯৭৭-১৯৮৮ সনে প্রকাশিত The Bangladesh Code এর প্রথম সংস্করণে, ২০০৭ সনে প্রকাশিত দ্বিতীয় সংস্করণে এবং ২০১৬ সনে সর্বশেষ প্রকাশিত তৃতীয় সংস্করণে ৫ নং ভলিউমে The Code of Civil Procedure, 1908 এ উক্ত সংশোধনী সমূহ অন্তর্ভুক্ত করা হয়নি। উক্ত বিচ্যুতি এবং অসংযোগ সমূহ নিম্নরূপঃ

১। **Order I** এর **rule 8(1)** এ উল্লেখ করা হয়েছে যে, Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

কিন্তু কলকাতা হাইকোর্টের ০২/০৪/১৯৩৮ খ্রি. তারিখের ৩৯০৫নং গেজেট মূলে সংশোধিত rule টি হল-Where there are numerous persons having the same interest in one suit, *the court may direct that* one or more of such persons may sue or be sued, or may defend, in such suit, on behalf of, or for the benefit of, all persons so interested. But the court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, wherefrom the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-194)

২। **Order-IV** এর **rule 2** এ উল্লেখ করা হয়েছে যে, The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

কিন্তু কলকাতা হাইকোর্টের ২৬/০৭/১৯৩৮ খ্রি. তারিখের ৮৫৭৯ নং গেজেট মূলে সংশোধিত rule টি হল-The Court shall cause the particulars of every suit [*except suits triable by a court invested with*

*the jurisdiction of a court of small causes under the Small Cause Courts act, 1887']* to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the complaints are admitted.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-285)

৩। **Order-V** এর **rule 5** এ উল্লেখ করা হয়েছে যে, The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly: Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

কিন্তু কলকাতা হাইকোর্টের ২৫/০৭/১৯২৮ খ্রি. তারিখের ১২৪২১ নং গেজেট মূলে সংশোধিত rule টি হল-The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, [*for the ascertainment whether the suit will be contested*'] or for the final disposal of the suit; and the summons shall contain a direction accordingly: Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-290)

৪। **Order-V** এর **rule 15** এ উল্লেখ করা হয়েছে যে, Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any [adult member] of the family of the defendant who is residing with him. Explanation.- A servant is not a member of the family within the meaning of this rule.

কিন্তু কলকাতা হাইকোর্টের ২৫/০৭/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট মূলে সংশোধিত rule টি হল- Where in any suit the defendant *is absent from his residence at the time when service is sought to be effected on him thereat and there is no likelihood of his being found thereat within a reasonable time, then unless he has an agent empowered to accept service of the*

*summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him: Provided that where such an adult male member has an interest in the suit and such interest is adverse to that of the defendant, a summon so served shall be deemed for the purposes of the third column of Article 164 of Schedule I of the Limitation Act, 1908, not to have been duly served.*

Explanation.- A servant is not a member of the family within the meaning of this rule.]

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-300)

৫। **Order-V** এর **rule 17** এ উল্লেখ করা হয়েছে যে, Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person if any by whom the house was identified and in whose presence the copy was affixed.

কলকাতা হাইকোর্টের ২৫/০৭/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট মূলে সংশোধিত rule টি হল-Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, [*or Where the defendant is absent from his residence at the time when service is sought to be effected on him thereat and there is no likelihood of his being found thereat within a reasonable time,*] and where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily

resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-303)

৬। **Order-V** এর **rule 19** এ উল্লেখ করা হয়েছে যে, Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

কলকাতা হাইকোর্টের ২৫/০৭/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট মুলে সংশোধিত rule টি হল-Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the **['declaration']** of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-308)

৭। কলকাতা হাইকোর্টের ২৫/০৭/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট মুলে **Order- VI** এ **rule14A** এর উল্লেখ করা হলেও বাংলাদেশ কোডে উক্ত rule টি উল্লেখ করা হয়নি। উক্ত rule টি হল-

***[Every pleading when filed shall be accompanied by a statement in a prescribed form, signed as provided in rule 14 of this order, of the party's address for service. Such address may from time to time be changed by lodging in court a form duly filled up and stating the new address of the party and accompanied by a verified petition. The***

*address so given shall be called the registered address of the party and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purposes of execution, and shall hold good subject as aforesaid for a period of two years after the final determination of the cause or matter. Service of any process may be effected upon a party at his registered address in like manner in all respects as though such party resided there at]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-356)

৮। **Order-VII** এর **rule 3** এ উল্লেখ করা হয়েছে যে, Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers.

কলকাতা হাইকোর্টের 1918 সনের II নং rule অনুবলে সংশোধিত rule টি হল-Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers *[and where the area is mentioned, such description shall further state the area according to the notation used in the record of settlement or survey, with or without, at the option of the party, the same area in terms of the local measures”]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-400)

৯। **Order- VII** এর **rule 9(1)** এ উল্লেখ করা হয়েছে যে, The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it; and, if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number

of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements.

কলকাতা হাইকোর্টের ২৭/০৮/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট এবং বিগত ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে **rule 9(1)** কে **rule 9(1)** ও **9(1A)** হিসেবে বিন্যস্ত করে নিম্নরূপ সংশোধন করা হয়-

*[(1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it;*

*(IA) The plaintiff shall present with his plaint:-*

- (i) as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements;*
- (ii) draft forms of summons and fees for the service thereof.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-416, 417)

১০। কলকাতা হাইকোর্টের ২৫/০৭/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট মূলে **Order- VII** এ নতুন **rule 11(e)** এর উল্লেখ করা হলেও বাংলাদেশ কোডে উক্ত rule টি উল্লেখ করা হয়নি। উক্ত rule টি হল-

*[where any of the provisions of rule 9(1A) is not complied with and the plaintiff on being required by the court to comply therewith within a time to be fixed by the court, fails to do so:] [Provided that the time fixed by the court for the correction of the valuation or supplying the requisite stamp-paper shall not exceed twenty one days.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-430)

১১। **Order-IX** এর **rule 9(2)** এ উল্লেখ করা হয়েছে যে, No order shall be made under this rule unless notice of the application has been served on the opposite party.



কলকাতা হাইকোর্টের বিগত ০৩/০২/১৯৩৩ ইং তারিখের ৩৫১৬ নং এবং বিগত ০৯/০৪/১৯৫৬ খ্রি. তারিখের ২৪৫৫ গেজেট মুলে সংশোধিত ও পরিবর্তিত **rule** টি হল-

9(2) *[The plaintiff shall for service on the opposite parties, present along with the application under this rule either –*

- (i) *as many copies thereof on plain paper as there are opposite parties, or*
- (ii) *if the court by reason of the length of the application or the number of opposite parties or for any other sufficient reason grants permission in this behalf, a like number of concise statements.]*

9(3) No order shall be made under this rule unless notice of the application *[with a copy thereof (or concise statement as the case may be)]* has been served on the opposite party.

9(4) *[The provisions of s.5 of the limitation act shall apply to an application under rule 9(1) of this order.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-507)

১২। **Order- IX** এর **rule 13(2)** এ উল্লেখ করা হয়েছে যে, Provisions of section of the Limitation Act, 1908 shall apply to the applications under rule 13(1) of this order.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৩১৬ নং গেজেট মুলে সংশোধিত **rule** টি হল-

*[The defendant shall for service on the opposite party, present along with his application under this rule either –*

- (i) *as many copies there of plain paper as there are opposite parties, or*
- (ii) *if the court by reason of the length of the application or the number of opposite parties or for any other sufficient reason grants permission in this behalf, a like number of concise statements.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, P-521)

১৩। পূর্ব পাকিস্তান হাইকোর্টের ১৯৬৭ সনের মে মাসের ২৩৫১ নং গেজেট মুলে **Order- IX** এ **rule 13(3)** এর সংযোজন করা হয়। উক্ত rule টি হল-

**13(3) [Provisions of section 5 of the limitation Act, 1908 shall apply to the application under rule 13(1) of the order.]**

১৪। **Order- IX** এর **rule 14** এ উল্লেখ করা হয়েছে যে, No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মুলে সংশোধিত **rule** টি হল-

No decree shall be set aside on any such application as aforesaid unless notice [*‘together with a copy thereof (or concise statement as the case may be)’*] has been served on the opposite party.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-534)

১৫। **Order- XVI** এর **rule 2(1)** ও **2(2)** এ উল্লেখ করা হয়েছে যে,

2(1). The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

2(2). In determining the amount payable under this rule, the court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

কলকাতা হাইকোর্টের ২৫/০৭/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট মুলে **2(1)** ও **2(2)** বাতিল করে নিম্নোক্ত rule দুটি হল-**2(1)‘The court shall fix in respect of each summons such a sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the persons summoned in passing to and from the court in which he is required to attend, and for one day’s attendance.**

*2(2) [‘In fixing such an amount,] the court may, in case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-608)

১৬। **Order- XVI** এর **rule 3** এ উল্লেখ করা হয়েছে যে,

The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

কলকাতা হাইকোর্টের ২৫/০৭/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট মূলে সংশোধিত **rule** টি হল- The sum so *fixed* shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

**Provided-**

- (i) *that where the person summoned is a servant of the provincial Government whose pay exceeds Rs.10 per mensem or whose headquarters are situated more than five miles from the court, and he has been summoned to appear as a witness in his official capacity in a civil case to which Government is a party, the sum so fixed shall be credited to the treasury;*
- (ii) *that where the person summoned is a finger print expert of the criminal Investigation Department and he is summoned to give evidence in private cases, the sum so fixed other than his travelling allowance, shall be credited to the Treasury;*
- (iii) *that where the person summoned is the government examiner of Questioned Documents or his assistant and he is summoned to give evidence or his opinion is sought in private cases, the sum so fixed shall be credited to the Treasury;*

- (iv) *that where the person summoned is a servant of the central government or a state railway or any other commercial department of Government and he is summoned to give evidence in his public capacity in a civil case, whether Government is or is not a party , the sum so fixed shall be credited in the treasury to the government or the state railway, as the case may be , to which the employee belongs; and*
- (v) *that where the person summoned is a state railway employee and he is summoned to give evidence in his private capacity in a civil court in Assam, the sum so fixed shall be credited to the Railway he belongs .]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-610)

১৭। **Order- XVI** এর **rule 4(1)** এ উল্লেখ করা হয়েছে যে,

Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned, without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

কলকাতা হাইকোর্টের ২৫/০৭/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট মূলে সংশোধিত **rule** টি হল-Where it appears to the Court or to such officer as it appoints in this behalf that the sum (*so fixed*) is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned, without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-613)

১৮। কলকাতা হাইকোর্টের ২৫/০৭/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট মূলে **Order- XVI** এ **rule 7A** এর সংযোজন করা হলেও বাংলাদেশ কোডে উক্ত rule টি উল্লেখ করা হয়নি। উক্ত rule টি হল-

*[(i) Except where it appears to the court that a summons under this order should be served by the court in the same manner as summons to a defendant, the court shall make over for service all summonses under this order to the party applying therefor. The service shall be effected by or on behalf of such party by delivering or tendering to the witness in person a copy thereof signed by the judge or such officer as he appoints in this behalf and sealed with the seal of the court.*

*(ii) Rules 16 to 18 of order V shall apply to summons personally served under this rule, as though the person effecting service were a serving officer.*

*(iii) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgement of service or if 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 like manner as a summons to a defendant.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-617)

১৯। **Order- XVI** এর **rule 8** এ উল্লেখ করা হয়েছে যে, Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

কলকাতা হাইকোর্টের ২৫/০৭/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট মূলে সংশোধিত ও পরিবর্তিত **rule** টি হল-

8(1) Every summons under this Order, *not being a summons made over to a party for service under rule 7A(i) of this Order, shall be served as nearly as may be in the same manner as a summons to a defendant, and* the rules in Order V as to proof of service shall apply *thereto*.

(2) *The party applying for a summons to be served under this rule shall, before the summons is granted and within a period to be fixed, pay into court the sum fixed by the court under rule 2 of this order.*

*Exception. –When applying for a summons for any of its own officers in his official capacity, Government will be exempt from the operation of this rule.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-618)

২০। **Order- XVI** এর **rule 21** এ উল্লেখ করা হয়েছে যে, Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

কলকাতা হাইকোর্টের ১১/১১/১৯২৭ খ্রি. তারিখের ১৫২৬৪ নং গেজেট মূলে সংশোধিত ও পরিবর্তিত rule টি হল-

(1) Where any party to a suit is required *by any other party thereto* to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as applicable.

(2) *When a party to a suit gives evidence on his own behalf, the court may in its discretion permit him to include as costs in the suit a sum of money equal to the amount payable for travelling and other expenses to other witnesses in the case of similar standing.*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-627)

২১। কলকাতা হাইকোর্টের ০৮/১১/১৯২৭ খ্রি. তারিখের ১৫১৬৫ নং গেজেট মূলে **Order- XVIII** এর **rule 2A** এর সংযোজন করা হলেও বাংলাদেশ কোডে উক্ত rule টি উল্লেখ করা হয়নি। উক্ত rule টি হল-

*[Notwithstanding anything contained in clauses (1) and (2) of rule 2, the court may for sufficient reason go on with the hearing, although the evidence of the party having the right to begin has not been concluded, and may also allow either party to produce any witness at any stage of the suit.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-652)

২২। **Order- XXI** এর **rule 1(1)** ও **1(2)** এ উল্লেখ করা হয়েছে যে,

1(1). All money payable under a decree shall be paid as follows, namely:—

- (a) into the Court whose duty it is to execute the decree; or
- (b) out of Court to the decree-holder; or
- (c) otherwise as the Court which made the decree directs.

1(2). Where any payment is made under clause (a) of sub rule (1), notice of such payment shall be given to the holder.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৮ খ্রি. তারিখের ১৩৭৯ নং গেজেট মূলে সংশোধিত **rule** টি হল-

**1.(1)** All money payable under a decree shall be paid as follows, namely:—

- (a) by deposit in or by postal money order sent to the court* whose duty it is to execute the decree, or
- (b) out of Court to the decree-holder; or*
- (c) otherwise as the Court which made the decree directs.*

*(2)(a) where any payment is made under clause (a) of sub-rule (1), notice of such payment shall be given to the decree-holder or the person in whose favour the order is made.*

*(b) The cost of giving such notice shall be borne by the person making payment who shall have the option of having the notice served either by a process-server of the court or by registered post. No such notice shall issue until the said cost shall have been paid.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-IV, Page-738)

২৩। **Order- XXI** এর **rule 16** এ উল্লেখ করা হয়েছে যে,

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree holder in the decree is transferred by assignment in writing or

by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে সংশোধিত **rule** টি হল-

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree holder: Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment debtor, *[and until the court has heard their objections (if any) the decree shall not be executed provided that if, with the application for execution, an affidavit by the transferor admitting the transfer or an instrument of transfer duly registered be filed, the court may proceed with the execution of the decree pending the hearing of such objections.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-8)

২৪। **Order- XXI** এর **rule 17(1)** এ উল্লেখ করা হয়েছে যে,

On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with,



the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে সংশোধিত rule টি হল-

On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and if they have not been complied with *[the court shall allow the defect to be remedied then and there or within a time to be fixed by it. If the defect is not remedied within the time fixed the court may reject the application.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-21)

২৫। **Order- XXI** এর **rule 24(1)** এ উল্লেখ করা হয়েছে যে,

When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে সংশোধিত rule টি হল-

When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree *[and a day shall also be specified on or before which it shall be returned to the court. ]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-43)

২৬। **Order- XXI** এর **rule 26(3)** এ উল্লেখ করা হয়েছে যে,

Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে সংশোধিত rule টি হল-

Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, *[the Court shall require security from the judgment debtor unless sufficient cause is shown to the contrary]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-47)

২৭। **Order- XXI** এর **rule 39(5)** এ উল্লেখ করা হয়েছে যে,

Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit: Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬নং গেজেট মূলে সংশোধিত **rule** টি হল-

Sums disbursed by the decree-holder for the subsistence of the judgment-debtor \*\*\*\* shall be deemed to be costs in the suit: Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-77)

২৮। **Order- XXI** এর **rule 43** এ উল্লেখ করা হয়েছে যে,

Where the property to be attached is movable property, other than agricultural produce, in the possession of judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof: Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে সংশোধিত rule টি হল-

Where the property to be attached is movable property, other than agricultural produce, in the possession of judgment-debtor, the attachment shall be made by actual seizure, *at the*

*identification of the decree-holder or his agent, and, save as otherwise prescribed,* the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof: Provided that, when the property seized *does not, in the opinion of the attaching officer, exceed twenty rupees in value or* is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-86, 87)

২৯। **Order- XXI** এর **rule 44** এ উল্লেখ করা হয়েছে যে, Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,- (a) where such produce is a growing crop, on the land on which such crop has grown, or (b) where such produce has been cut or gathered, on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited, and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

কলকাতা হাইকোর্টের ২৯/০৫/১৯৪১ খ্রি. তারিখ প্রকাশিত ৪৪৪০ নং গেজেট মূলে সংশোধিত rule টি হল-

Where the property to be attached is agricultural produce, the attachment shall be made *[at the identification of the decree holder or his agent]* by affixing a copy of the warrant of attachment,-(a) where such produce is a growing crop, on the land on which such crop has grown, or where such produce has been cut or gathered, on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited, and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or

personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the court.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-96)

৩০। **Order- XXI** এর **rule 45(1)** এ উল্লেখ করা হয়েছে যে, Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মুলে সংশোধিত rule টি হল-

Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered *[and the applicant shall deposit in court such sum as the court shall require in order to defray the cost of watching or tending the crop till such time]*.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-98)

৩১। কলকাতা হাইকোর্টের ২৬/০১/১৯৩৫ খ্রি. তারিখের ১৮৫৪ নং গেজেট মুলে **Order- XXI** এর **rule 46A, 46B, 46C. 46D, 46E, 46E, 46F, 46G, 46H** এর সংযোজন করা হলেও বাংলাদেশ কোডে উক্ত rule গুলো উল্লেখ করা হয়নি। উক্ত rule গুলো হল-

**46A(1).***The court may in the case of a debt, other than a debt secured by a mortgagor or a charge or by a negotiable instrument, which has been attached under rule 46 or 51 of this Order, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt calling upon him either to pay into the debt due from him to the judgment debtor or so much court thereof as may be sufficient to satisfy the decree and costs of execution, or appear and show cause why he should not do so:*

*Provided that if the debt in respect of which that application aforesaid is made in respect of a sum of money beyond the pecuniary jurisdiction of the court, the court shall sent the execution case to the court of the district judge to which the court is subordinate, and there upon the court of the District judge or any other competent court to which it may be transferred by the district judge will deal with it in the same manner as if the case had been originally instituted in that court.*

*(2) Such application shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the garnishee is indebted to the judgment debtor.*

*46B. Where the garnishee does not forthwith pay into the court the amount due from him to the judgment debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution or does not appear and show cause in answer to the notice, the court may order the garnishee to comply with the terms of such notice, and on such order execution any issue as thought such order were a decree against him.*

*46C. Where the garnishee disputes liability, the court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders upon the parties as may seem just.*

*46D. Where it is suggested or appears to be probable that the debt belongs to some third person or that any third person has a lien or charge on, or other interest in, such debt, the court may order such third person to appear and state the nature and particulars of his claim (if any) to such debt and prove the same.*

*46E. After hearing such third person and any other person or persons who may subsequently be ordered to appear or where such third or other person or persons do not appear when so ordered, the court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest if any of such third or other person as may seem fit and proper.*

**46F.** *Payment made by the garnishee on a notice under rule 46A or under any such order as aforesaid shall be valid discharge to him as against the judgment debtor and any other person ordered to appear as aforesaid for the amount paid or levied although such judgment may be set aside or reversed.*

**46G.** *The costs of any application made under rule 46A and any proceeding arising there from or incidental there to, shall be the discretion of the court.*

**46H.** *An order made under rule 46B, 46C or 46E shall be appealable as a decree.*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-108)

৩২। **Order- XXI** এর **rule 54(2)** এ উল্লেখ করা হয়েছে যে, The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

কলকাতা হাইকোর্টের ২৬/০৭/১৯৪১ খ্রি. তারিখের ৬১৪৯ নং গেজেট মূলে সংশোধিত **rule** টি হল-

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate [*and also, where the property is situated within cantonment limits, in the office of the local Cantonment Board and the Military Estates Officer concerned.*]

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-140)

৩৩। কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে **Order-XXI** এ **rule 54(3)** এর সংযোজন করা হলেও বাংলাদেশ কোডে উক্ত **rule** টি উল্লেখ করা হয়নি। উক্ত **rule** টি হল-

***[(3) Such order shall take effect, where there is no consideration for such transfer or charge, from the date of the order, and where there is consideration for such transfer, or charge, from the date when such order came to the knowledge of the person to whom or in whose favour the property was transferred or charged, or from the date when the order is proclaimed under sub-rule (2) whichever is earlier.]***

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-140)

৩৪। **Order- XXI** এর **rule 57** এ উল্লেখ করা হয়েছে যে, Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩১৫৬নং গেজেট মুলে সংশোধিত **rule** টি হল-

Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease ***[unless the court shall make an order to the contrary.]***

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-147)

৩৫। **Order- XXI** এর **rule 58(2)** এ উল্লেখ করা হয়েছে যে, Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩১৫৬নং গেজেট মুলে সংশোধিত rule টি হল-

Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection ***[‘upon such terms as to security, or otherwise, as to the court shall seem fit’]***

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-151)

৩৬। কলকাতা হাইকোর্টের ০৩/১১/১৯৩৩ খ্রি. তারিখের ২৫৫৮৫ নং গেজেট মুলে **Order- XXI** এর **rule 63A** এর সংযোজন করা হলেও বাংলাদেশ কোডে উক্ত rule টি উল্লেখ করা হয়নি। উক্ত rule টি হল-

*[When an attachment of movable property ceases the court may order the restoration of the attached property to the person in whose possession it was before the attachment.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-176)

৩৭। **Order- XXI** এর **rule 66 (2) clause (e)** এ উল্লেখ করা হয়েছে যে, every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

কলকাতা হাইকোর্টের ২৬/০৭/১৯৩৮ খ্রি. তারিখের ৮৫৭৫ নং গেজেট মুলে সংশোধিত rule টি হল-

every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property: *[‘provided that it shall not be necessary for the court it-self to give its own estimate of the value of the property but the proclamation shall include the estimate, if any given by either or both of the parties’]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-184)

৩৮। **Order- XXI** এর **rule 75(2)** এ উল্লেখ করা হয়েছে যে,

Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৫ নং গেজেট মুলে সংশোধিত **rule** টি হল-

Where the crop from its nature does not admit of being stored *[or can be sold to greater advantage in an unripe state (e.g. as green wheat) ]*, it may be sold before it is cut and



gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-206)

৩৯। **Order- XXI** এর **rule 89(1)** এ উল্লেখ করা হয়েছে যে,

Where immovable property has been sold in execution of a decree, any person, either owing such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,—

- (a) for payment to the purchaser, a sum equal to five percent of the purchase-money, and
- (b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি.তারিখের ৩৫১৬ নং গেজেট মুলে সংশোধিত **rule** টি হল-

Where immovable property has been sold in execution of a decree, any person, *[whose interest is affected by such sale (provided that such interest has not been voluntarily acquired by him after sale), may apply to have the sale set aside on his depositing in Court],-*

- (a) for payment to the purchaser, a sum equal to five percent of the purchase-money, and
- (b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-225)

৪০। **Order- XXI** এর **rule 90(1)** এ উল্লেখ করা হয়েছে যে,

Where any immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে সংশোধিত **rule** টি হল-

Where any immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a ratable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it: Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud [*or on the ground of failure to issue notice to him as required by rule 22 of this order*]

*[provided- (i) that no sale shall be set aside on the ground of such irregularity, fraud or failure unless upon the facts proved, the court is satisfied that the applicant has sustained substantial injury by reason of such irregularity, fraud or failure.]*

*(ii) that no sale shall be set aside on the ground of any defect in the proclamation of sale at the instance of any person who after notice did not attend at the drawing up of proclamation or of any person in whose presence the proclamation was drawn up, unless objection was made by him at the time in respect of the defect relied upon.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-257, 258)

৪১। **Order- XXI** এর **rule 98** এ উল্লেখ করা হয়েছে যে, Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে সংশোধিত **rule** টি হল-

Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, [*or on his behalf*], it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, [*or on his behalf*], to be detained in the civil prison for a term which may extend to thirty days.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-288)

৪২। **Order- XXI** এর **rule 99** এ উল্লেখ করা হয়েছে যে,

Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে সংশোধিত **rule** টি হল-

Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith [*to have a right*] to be

in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-291)

৪৩। কলকাতা হাইকোর্টের ০৩/১১/১৯৩৩ খ্রি. তারিখের ২৫৫৮৫ নং গেজেট মূলে **Order- XXI-A** এর অধীনে **rule 1-17** এর সংযোজন করা হলেও বাংলাদেশ কোডে উক্ত rule গুলো উল্লেখ করা হয়নি। উক্ত rule গুলো নিম্নরূপ-

*R.1. Every person applying to a civil court to attach movable property shall, in addition to the process- fee, deposit such reasonable sum as the court may direct if it thinks necessary, for the cost of its removal to the court house, for its custody, and if such property is livestock, for its maintenance according to the rates prescribed in rule 2 of this Order. If the deposit, when ordered be not made, the attachment shall not issue. The court may, from time to time, order the deposit of such further fees as may be necessary. In default of due payment, the property shall be released from attachment.*

*R.2. The following daily rates shall be chargeable for the custody and maintenance of livestock under attachment:-*

*Goat and pig- Annas 2 to annas 4*

*Sheep-annas 2 to annas 3*

*Cow and bullock –annas 6 to annas 10*

*Calf-Annas 3 to annas 6*

*Buffalo-Annas 8 to annas 12*

*Horse- Annas 8 to annas 12*

*Ass-Annas 3 to annas 5*

*Poultry-Annas 2 to annas 3 pies 6*

*Explanation- Although the rates indicated above are regarded as reasonable, the court should consider individual circumstances and the local conditions and permit deposit at reduced rates where the actual expenses are likely to fall short of the minima or maxima. If any specimen or special value in any of the above classes is seized a special rate may be fixed by the court. If any animal not specified is attached, the court may fix the cost as a special case.*

*R.3. When the property attached consists of agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to Rule 43, Order 21, he may, unless the court has otherwise directed, leave it in the village or place where it has been attached-*

*[(a) in the charge of the decree holder or his agent, or of the judgment debtor or some other person, provided that the decree-holder or his agent or the judgment-debtor or other person enters into a bond in form No. 15-A of Appendix E to this Schedule, with one or more sureties, to produce the attached property when called for and to be liable for any loss which the owner of the property attached may suffer due to willful negligence of the bounden, or*

*(b) in the charge of an officer of the court, if a suitable place for its safe custody be provided and the remuneration of the officer for a period of fifteen days paid in advance.*

*R.4. If attached property (other than livestock) is not sold, under the proviso to Rule 43, Order 21, or retained in the village or place where it is attached, it shall be brought to the court-house at the decree-holder's expense and delivered to the proper officer of the court. In the event of the decree holder failing to make his own arrangement for the removal of the property with safety, or paying the cost thereof in advance to the attaching officer, then unless such payment has previously been made into Court, the attachment shall at once be deemed to be withdrawn and the property shall be made over to the person in whose possession it was before attachment.*

*R.5. When livestock is attached it shall not, without the special order of the court, be brought to the court or its compound or vicinity, but shall be left at the village or place where it was attached in the manner and on the conditions set forth in rule 3 of this order:*

*Provided that livestock shall not be left in the charge of any person under clause (a) of the said rule unless he enters into a bond for the proper care and maintenance thereof as well as for its protection when called for, and that it shall not be left in charge of an officer of the court under clause (b) of the said rule unless in addition to the requirements of the said clause provision be made for its care and maintenance.*

*R.6. When for any reason, the attaching officer shall find it impossible to obtain compliance with the requirements of the preceding rule so as to entitle him to leave the attached livestock in the village or place where it was attached and no order has been made by the court for its removal to the court, the attaching officer shall not proceed with the attachment and no attachment shall be deemed to have been effected.*

*R.7. Whenever it shall appear to the court that livestock under attachment are not being properly tendered or maintained, the court shall make such orders as are necessary for their care and maintenance and may, if necessary direct the attachment to cease, and the livestock to be returned to the person in whose possession they were when attached. The court may order the decree-holder to pay any expenses so incurred in providing for the care and maintenance of the livestock, and may direct that any sum so paid be refunded to the decree-holder by any other party to the proceedings.*

*R.8. If under a special order of the court livestock is to be conveyed to the court, the decree-holder shall make his own arrangement for such removal, and if he fails to do so, the attachment shall be withdrawn and the property made over to the person in whose possession it was before attachment.*

*R.9. Nothing in these rules shall prevent the judgment-debtor or any person claiming to be interested in attached livestock from making such arrangement for feeding,*

*watering and tending the same as may not be inconsistent with its safe custody, or contrary to any order of the court.*

*R.10. The Court may direct that any sums which have been legitimately expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the sale proceeds of the attached property, if sold, or be paid by the person declared entitled to delivery before he receives the same. The court may also order that any sum deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings.*

*R.11. In the event of the custodian of the attached property failing, after due notice, to produce such property at the place named to the officer deputed for the purpose, or to restore it to its owner if so ordered or failing in the case of live-stock to maintain and take proper care thereof, he shall be liable to be proceeded against for the enforcement of his bond in the execution proceedings.*

*R.12. When property other than livestock is brought to the court, it shall immediately be made over to the Nazir, who shall keep it on his sole responsibility in such place as may be approved by the court. If the property cannot from its nature or bulk be conveniently stored, or kept on the court premises or in the personal custody of the Nazir, he may, subject to the approval of the court, make such arrangements for its safe custody under his own supervision as may be most convenient and economical. If any premises are to be hired and persons are to be engaged for watching the property, the court shall fix the charges for the premises and the remuneration to be allowed to the persons (not being officers of the court) in whose custody the property is kept. All such costs shall be paid into court by the decree-holder in advance for such period as the court may from time to time direct.*

*R.13. When attached livestock is brought to court under special order as aforesaid it shall be immediately made over to the Nazir, who shall be responsible for its due preservation and safe custody until he delivers it up under the orders of the court,*

*R.14. If there be a pound maintained by the Government or local authority in or near the place where the court is held, the Nazir shall, subject to the approval of the court, be at liberty to place in it such livestock as can be properly kept there, in which case the pound-keeper will be responsible for the property to the Nazir and shall receive from the Nazir the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description.*

*R.15. If there be no pound available, or, if in the opinion of the court, it be inconvenient to lodge the attached livestock in the pound, the Nazir may keep them in his own premises, or he may entrust them to any person selected by himself and approved by the court.*

*R.16. All costs for the keeping and maintenance of the livestock shall be paid into Court by the decree-holder in advance for not less than fifteen days at a time as often as the court may from time to time direct. In the event of failure to pay the costs within the time fixed by the court, the attachment shall be withdrawn and the livestock shall be at the disposal of the person in whose possession it was at the time of attachment.*

*R.17. So much of any sum so deposited or paid into court under these rules as may not be expended shall be refunded to the depositor.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-306, 307, 308)

৪৪। **Order-XXII** এর **rule 11** এ উল্লেখ করা হয়েছে যে,

In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal:

কলকাতা হাইকোর্টের ১৫/০৭/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট মূলে সংশোধিত **rule** টি হল-

In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an



appeal: *[provided always that where an appellate court has made an order dispensing with service of notice of appeal upon legal representatives of any person deceased under Order XLI, rule 14(3) the appeal shall not be deemed to abate as against such party and the decree made on appeal shall be binding on the estate or the interest of such party.]*

৪৫। **Order- XXXII** এর **rule 4(4)** এ উল্লেখ করা হয়েছে যে,

Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

কলকাতা হাইকোর্টের ১৩/০৬/১৯২৭ খ্রি. তারিখের ৮৩১৮ নং গেজেট মূলে সংশোধিত rule টি হল-

*[Except as otherwise provided in the order]* the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-501)

৪৬। কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে **Order- XXXIV** এর **rule 4(3)** ও **4(4)** যথাক্রমে **rule 4(4)** ও **4(5)** এ **renumbered** করে নতুন **rule 4(3)** অন্তর্ভুক্ত করা হয়েছে। উক্ত rule টি হল-

**4(3) [The court may in its discretion direct in the decree for sale that if the proceeds of the sale are not sufficient to pay the mortgage debt, the mortgagor shall pay the balance personally.]**

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, P-588)

৪৭। **Order-XXXIX** এর **rule 1** এ উল্লেখ করা হয়েছে যে, Where in any suit it is proved by affidavit or otherwise—(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে **rule 1** কে **rule 1(1)** এ **renumbered** করে নতুন **rule 1(2)** সংযোজন করা হয়েছে যা নিম্নরূপ-

1(1) Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

**[(2) In case of disobedience, or of breach of the terms of such temporary injunction or order, the court granting the injunction or making such order may order the**

*property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the court directs his release.*

*(3) The property attached under sub-rule (2) may, when the Court considers it fit so direct, be sold and out of the proceeds the court may award such compensation to the injured party as it finds proper and shall pay the balance, if any, to the party entitled thereto.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-V, Page-683)

৪৮। কলকাতা হাইকোর্টের ২৫/০৭/১৯২৮ খ্রি. তারিখের ১০৪২৮ নং গেজেট মূলে **Order- XLI** এ **rule 14(3)** এর সংযোজন করা হলেও বাংলাদেশ কোডে উক্ত **rule** টি উল্লেখ করা হয়নি। উক্ত **rule** টি হল-

*[It shall be in the discretion of the appellate court to make an order, at any stage of the appeal whether on its own motion, or expert, dispensing with service of such notice on any respondent who did not appear, either at the hearing in the court whose decree is complained of or at any proceeding subsequent the decree of that court or on the legal representatives of any such respondent: Provided that-*

*(a)The Court may require notice of the appeal to be published in any newspapers or newspapers as it may direct,*

*(b)No such order shall preclude any such respondent or legal representative from appearing to contest the appeal.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-VI, Page-3)

৪৯। **Order- XLII** এর **rule 1** এ উল্লেখ করা হয়েছে যে,

The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

কলকাতা হাইকোর্টের ১৫/০২/১৯৩৮ খ্রি. তারিখের ১৭৫০ নং গেজেট মূলে সংশোধিত **rule** টি হল-

The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees. *[Provided that every memorandum of appeal from an appellate decree shall be accompanied by a copy of the decree appealed from and also (unless the court sees fit to dispense with any or all of them), by copies of the judgment on which the said decree is founded and of the judgment and decree of the court of first instance.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-VI, Page-100)

৫০। কলকাতা হাইকোর্টের ০৩/০২/১৯৩৩ খ্রি. তারিখের ৩৫১৬ নং গেজেট মূলে **Order- XLIII** এ **rule 1(ia)** এর সংযোজন করা হলেও বাংলাদেশ কোডে উক্ত **rule** টি উল্লেখ করা হয়নি। উক্ত **rule** টি হল-

*1(ia) an order under rule 57 of Order XXI, directing that an attachment shall cease or directing or omitting to direct that an attachment shall continue;*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-VI, Page-111)

৫১। **Order- XLVIII** এর **rule 1(2)** এ উল্লেখ করা হয়েছে যে,

The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

কলকাতা হাইকোর্টের ১৭/০১/১৯৩৪ খ্রি. তারিখের ১১৫৪ নং গেজেট মূলে সংশোধিত **rule** টি হল-

1(2). The court fee Chargeable for such service shall be paid *when the process is applied for, or within such time, if any, as the court may, when ordering its issue fix for the purpose.*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-VI, Page-168)

৫২। কলকাতা হাইকোর্টের ০৮/০৮/১৯৪০ খ্রি. তারিখের ৭৩৭৬ নং গেজেট মূলে **Order- XLIX** এ **rule 4** এর সংযোজন করা হলেও বাংলাদেশ কোডে উক্ত **rule** টি উল্লেখ করা হয়নি। উক্ত **rule** টি নিম্নরূপ-

*[A judge of the High Court Division may pronounce the written judgment or opinion of any other judge of the said court signed by him when such judge continues to be a*

*judge of such court but is prevented by absence or any other reason from pronouncing that judgment or opinion in open Court.]*

(The AIR Manual, Civil and Criminal, 4<sup>th</sup> Edition, Volume-VI, Page-171)