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CONSULTATION PAPER ON CASE MANAGEMENT

Introduction

In the judgment of the Supreme Court in Salem Bar Association vs. Union of India, the Supreme Court has requested this committee to prepare a case management formula. It is in the light of the said judgment that we are coming forward with this consultation paper on case management.

We shall be first referring to the general concept of case management, a concept which has been developed in recent times in several countries in the last two decades and which is now yielding valuable results. We therefore thought it necessary to introduce the concept of 'case management' by referring to the system obtaining in various countries.

In the annexure to this note on case management, we have provided the model case flow management rules, separately (A) for the trial courts and subordinate appellate courts, (B) for the High Courts. So far as the Supreme Court of India is concerned, we do not think it necessary to prepare any draft case management rules, at this stage unless of course the Supreme Court of India considers it necessary to direct this committee to prepare a formula for the case management in Supreme Court.

The concept of 'case management':

With overburdened dockets, courts in various countries have, in the last two decades, started applying management methods to the court systems. Just as management of business enterprises has changed the business environment with the introduction of MBAs into the system, court systems have shown tremendous improvement with 'case management', which means that the Judge or an officer of the court sets a time-table and monitors the case from its initiation to its disposal. Hitherto, we are accustomed to a system where the litigants or their lawyers set the time-table which suits them but in a case management regime, these are done by the Judge or a court manager. A survey of the progress made in other countries reveals that, in spite of some objection from lawyers and judges, the case management policy has yielded exceedingly good results. There is voluminous literature available today in the internet on 'case management', and in books and articles and reports.

In Canada, according to the Ministry of Attorney General Ontario, Canada, 1993 as quoted in Lord Woolf's Interim Report, Chapter 5, Para 18:

> "Case management is a comprehensive system of management of time and events in a law-suit as it proceeds through the justice system, from initiation to resolution. The two essential components of case-management system are the setting of a time table for pre-determined events and suspension of the progress of the law-suit through its time-table".

In Australia, Prof. Sallman of the Australian Institute of Judicial Administration (quoted in Lord Woolf's interim report, Chapter 5, para 9) stated as follows:

> "The Revolution has involved a dramatic shift from a laissez faire approach in conducting court-business to an acceptance by courts of the philosophical principle that it is their responsibility to take interest in cases from a much earlier stage in the process and manage them through a series of milestones to check-posts. Most courts have now acted

> upon this philosophy and introduced a variety of schemes, the common denominator of which is substantially increased court supervision and, in some instances, control … The essence of it is the adoption by courts of a systematic, managerial approach to dealing with case loads."

In the United States, where case-management systems are firmly established, the Federal Judicial Centre, Washington D.C. has referred to the 'active role' of the Judge:

> "to anticipate problems before they arise rather than waiting passively for matters to be presented by counsel. Because the attorneys may be immersed in the details of the case, innovation and creativity in formulating any litigation plan may frequently depend on the court."

The courts' substantive role consists of the 'Judge's involvement' not merely limited to procedural matters but refers to his becoming familiar, at an early stage, with the substantive issues in order to make informal rulings on issues, dispositions, and narrowing, and on related matters such as scheduling, bifurcation and consideration and discovery control'. The Judge periodically 'monitors' the progress of the litigation to see that schedules are being followed and to consider necessary modifications in the litigation plan. The Judge may call for interim reports between scheduled conferences. But, at the same time, time-limits and the controls and requirements are not imposed arbitrarily or without considering the views of counsel, and are subject to revision when warranted by the circumstances. Once having established a programme, however, the Judge expects schedules to be met and when necessary impose appropriate sanctions for dereliction and dilatory tactics (Manual of Complex Litigation, 3rd, 1994, Federal Judicial Centre, Washington D.C., quoted in Lord Woolf's Interim Report, Chapter 5, para 20).

(UK) Lord Woolf's Reports on 'Case Management':

Lord Woolf's 'case management' recommendations, to the extent relevant for us, are as follows:

(1) There should be a fundamental transfer in the responsibility for the management of civil litigation from litigants and their legal advisors to the courts;

(2) The management should be provided by a three tier system:
   - (i) an increased shall claim jurisdiction;
   - (ii) a new fast track for cases in the lower end of the scale; and
   - (iii) a new multi-track for the remaining cases

(3) The court shall have an enlarged jurisdiction to give summary judgment on the application of the claimant or defendant or an courts' own initiation, on the ground that a case (or past of a case) has no realistic prospect of success.

(4) All cases where a defence is received will be examined by a 'procedural judge' who will allocate the case to the appropriate track.

(5) In the large court centers, Judges engaged on the management and trial of civil proceedings, should work in turns and normally a case should be handled only by members of the same team.

(6) The fast-track, which is primarily for cases where the value does not exceed 10,000 pounds, will have a set time-table of 20-30 weeks, limited discovery, a trial confined to not more than 3 hours and no oral evidence from experts; and would also have fixed costs.

(7) On the multi-track, case-management will usually be provided by at least two interlocutory management hearings; the first will usually be a 'case-management conference' shortly after the defence is received (usually conducted by the procedural Judge) and the second will be a pre-trial review (monthly conducted by the trial Judge).

(8) The multi-track cases will proceed according to the fixed time-table and initially to an approximate date of trial and subsequently to a fixed date of trial.

These recommendations were finalized in a very elaborate final report by Lord Woolf.

Objections to 'case management' and answers thereto:

In as much as it appears to us that the same objections are likely from the Bar and the Bench in India as in UK, we shall refer to them as raised in UK (see Section II, Chapter I of Lord Woolf's final Report):

(a) The first objection was that the proposals will undermine the adversarial nature of the civil justice system;
(b) Judges are not well-equipped to manage;
(c) Reading the papers of the case, conducting conferences and pre-trial reviews, will add significantly to the burden of hard-pressed Masters and District Judges;
(d) It would also mean increase in the number of interlocutory hearings;
(e) More staff and sources will be necessary.

In reply to the above objectives, Lord Woolf pointed out that:

(a) the adversarial role will continue but will function in an environment which will focus on the key issues rather than allowing every issue to be pursued regardless of expense and time, as at present;
(b) there functions will not be performed by all Judges but only by procedural Judges (i.e. Masters and District Judge), although in complex cases, Civil Judges and High Court Judges will perform the tasks;
(c) Some steps indicated by the procedural Judges may be altered by trial Judges;
(d) All cases need not go through the system but cases will be selected for the purpose;
(e) There is need for training both Judges and staff;
(f) The proposals do add additional burden but the idea is to persuade parties to take to ADR systems in most cases, leaving complex cases alone for the courts;
(g) In several cases, the issues can be identified at an early stage and at the pre-trial review, and courts will try to minimize the time and expense;
(h) Case management hearings will then replace rather than add to the present system of interlocutory hearings;
(i) As agreed by the Bar Council and Law Society, additional staff and funds will be necessary;
(j) Counsel shall have to file statements as to submissions;
(k) Existing available resources have to be prioritized;
(l) Law clerks must be employed to help the Judge in these tasks;
(m) Increased use of information technology will help to release some staff for the other additional work.

Simple cases should be allocated to 'fast track' and complex cases to 'multi-track'. However, some cases have to be excluded from 'fast-track'. Lord Woolf in his final Report recommended exclusion of the following cases from the 'fast-track', namely, suits:

(a) which raise issues of public importance; or
(b) which are test cases; or
(c) where oral evidence of experts is necessary; or
(d) which require lengthy oral arguments or significant oral evidence which cannot be accommodated within the fast track hearing time; or
(e) which involve substantial documentary evidence.

Transfer from 'fast-track' to 'multi-track', is also be permissible in appropriate cases.

The Australian Law Reform Commission (1997)

The Australian Law Reform Commission in a background paper called "Judicial and Case Management" (1999) has elaborately considered this subject.

It defines 'Judicial Management' as a term used to describe all aspects of judicial involvement in the administrative and management of courts and the cases before them. It includes procedural activism by judges in pre-trial and trial process and in 'case management'. At its broadest, it also encompasses questions of court governance and court administration. 'Case management' is defined as referring to process involving the control of movement of cases through a court or tribunal (case flow management) or the control of the total workload of a court or tribunal. Case management in courts is often, but not always, performed by Judges. When it is performed by Judges, it is referred to as 'judicial case management'.

'Case management' means that the 'progress of cases' before the courts must be 'managed, in one sense, its direction from traditional adversarial case management which had left the pace of litigation primarily in the hands of the legal practitioners. The courts' role was simply to respond to processes initiated by practitioners. But, the objectives of new 'case management' include:

(a) early resolution of disputes;
(b) reduction of trial time;
(c) more effective use of judicial resources;
(d) the establishment of trial standards;
(e) monitoring of case loads;
(f) development of information technology support;
(g) increasing accessibility to the courts;
(h) facilitating planning for the future;
(i) enhanced public accountability;
(j) the reduction of criticism of the justice system by reason of perceived inefficiency (J. Wood, 'The Changing Face of the Case Management: The New South Wales Experience, Paper, Aug. 1994)

M. Soloman & D. Somesflot in their 'Case Flow Management to the Trial Court' (American Bar Association, 1997) have identified the following aspects:

(a) judicial commitment and leadership;
(b) court consultation with the legal profession;
(c) court supervision of case progress;
(d) the case of standards and goals;
(e) a monitoring information system;
(f) listing for credible dates;
(g) strict control of adjournments.

It has been stated in the Report of the Commission that case flow management has helped bring about substantial procedural, operational and cultural changes in the judicial systems of Australia.

The Report is in five chapters and sums to 38 pages with 147 references. (seehttp://www.australia.edu.au./an/other/alre/publications/pb/3/management.html)

Certain Rules for 'case-management' in US:
The court of Common Pleas, Delaware county (see http://wwww.co.delaware.oh.us//court/casehtmal) published Rules w.e.f. 1.1.1999 having the following headings:

Rule 21: case flow management
Rule 22: classification of cases, Deadlines, timings
Rule 23: general time limits
Rule 24: case scheme (in individual cases)
Rule 25: Pre-trial procedure
Rule 26: Disclosure of possible lay and expert witnesses
Rule 27: change of the trial assignment date
Rule 28: discovery
Rule 29: production of (hospital) Records
Rule 30: dispositive motion (Summary Judgment, Judgment on pleadings, rejection of plaint or agreed issues)
Rule 31: default judgments motions
Rule 32: summary judgment
Rule 33: administrative appeals
Rule 34: Conduct of trial

We have referred to the above literature only to highlight the meaning of 'case management' and to impress on the Bench and the Bar that case management systems have come to stay in various countries and have started yielding good results.

We are annexing Draft Case Management Procedures, to this brief introduction, in the separate set of rules, (A) for original suits and first appeals, both civil and criminal, in the sub-ordinate Courts, (B) for the writ petitions and civil and criminal appeals in the High Courts.

ANNEXURE

DRAFT CASE FLOW MANAGEMENT RULES

A. DRAFT CASE FLOW MANAGEMENT RULES FOR SUB-ORDINATE COURTS

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……High Court Rules, 2003

In exercise of the power conferred by Part X of the Code of Civil Procedure, 1908 (5 of 1908) and …… High Court Act, …… and all other powers enabling, the …… High Court hereby makes the following Rules, in regard to case flow management in the subordinate courts.

TRIAL COURT AND FIRST APPELLATE SUBORDINATE COURTS

I. Division of civil suits and appeals into tracks

1. Based on the nature of dispute, the evidence to be examined and the time to be taken for the completion of suit, the suits shall be channelled in different tracks. Suits in Track 1 may comprise of family matters, divorce, child cutody, adoption maintenance etc. Track 2 may consist of money suits, based on negotiable instruments and suits based on which are based primarily on documents. Tracks 3 shall include suits concerning partition and like property disputes, trade marks, copyright and other Intellectual property matters. Track 4 shall include rent, lease, eviction matters etc. All effort shall be taken to complete the suit in Track 1 within a period of 6 months, Track 2 – within 9 months, Track 3- within 1 year, Track 4 – within 11/2 years.

2. The Court or a judge or judges of the Court nominated for the purpose shall at intervals of every month monitor the stage of each case allocated to the different tracks and take appropriate decisions with a view to ensure that the cases are disposed of within the period fixed for each track.

3. The Court or the judge or judges, referred to in clause (2) above may shift a case from one track to another depending upon the complexity and other circumstances of the case.

4. Where computerization is available, data will be fed into the computer in such a manner that the Court or judge or judges, referred to in clause (2) above, will be able to ascertain the position and stage of every case in every track from the computer screen.

5. The court or the judge or judges, referred to in clause (2) above, shall keep control of the flow of every case, either from the register or from the computer.

6. The High Court shall also divide civil appeals in subordinate Courts into different tracks on the lines indicated in sub clauses (1) to (5) above and the said clauses shall apply, *mutatis mutandis*, to appeals filed in the subordinate Courts.

7. Division of criminal trials and appeals into different tracks is dealt with separately under the heading ‘criminal trial and appeal’

II. Original Suit :

1. Fixation of time limits while issuing notice:

(a)Whenever notice is issued in a suit, the notice should indicate the date by which the written statement should be filed. The replication, if permitted, should be filed within four weeks of receipt of the written statement. If there are more than one Defendant, each one of the Defendant should comply with this requirement within the time-limit. The Court shall not ordinarily grant extension of time for filing written statement or replication unless the party in default by an application shows that the delay was caused due to reasonable cause. The Court shall while granting any extension of time record the reasons and impose costs on the party in default.

(b) The notice shall be accompanied by a complete copy of the plaint and all its annexures/enclosures and copies of the interlocutory applications, if any.

(c) The copies of written statement or reply, together with all annexures shall be served in advance on the plaintiff.

(d) The procedure indicated in clauses (a to (c) shall apply to all interlocutory applications as well.

2. Service of Summons / notice and completion of pleadings:

(a) Summons may be served as indicated in clause (3) of Rule 9 of Order V

(b) If the Plaintiff or the Court is unable to effect service on the Defendants, the provisions of Rule 17 of Order V shall apply and the Plaintiff shall within 7 days from the date of the inability to serve the notice, request the Registrar to allow service by substituted service. The dates for filing the written statement and replication, if any, shall accordingly stand extended.

(c) The date for second hearing in respect of the suit, unless the Court otherwise directs, should be before the Registrar for the purpose of ensuring that the pleadings are completed and it is only after pleadings are complete that the petition should be listed before Court. If, however, any of the parties desire that the matter should be placed before Court even before completion of pleadings since urgent orders are necessary, an office report may be prepared and the same may be placed before Court.

3. Procedure on the grant of interim orders:

If an interim order is granted at the first hearing by the Court, the Defendants would have the option of moving appropriate applications for vacating the interim order even before the returnable date indicated in the notice and if such an application is filed, it shall be listed as soon as possible even before the returnable date.

If the Court passes an ad-interim ex-parte order, and if the written statement is filed by the Defendants and if, for any reason, the Plaintiff fails to file the rejoinder, and as a result the pleadings are incomplete on the date appointed, the Court shall consider vacating the stay or interim order passed by the Court and list the case for that purpose. The Plaintiff may also waive his right to file a rejoinder. Such exercise of option shall be conveyed to the Registrar on or before the date fixed for filing of rejoinder. Such communication of option by the plaintiff to the Registrar will be deemed to be completion of pleadings.

4. Referral to Alternate Dispute Resolution:

After the completion of admission and denial of documents by the parties, the suit shall be listed before the Court. The Court shall thereafter, follow the procedure prescribed under the Alternative Dispute Resolution and Mediation Rules, 2002.

5. Procedure on the failure of Alternate Dispute Resolution:

On the filing of report by the Mediator under Rule 23 of the Mediation Rules that efforts at Mediation have failed, or a report by the Conciliator that efforts at Conciliation have failed, the suit shall be listed before the Registrar within a period of 7 days. At the said hearing all the parties shall submit the draft issues proposed by them. The suit shall thereafter be listed before the Court within 7 days for framing of issues.

When the suit is listed for direction after the attempts at conciliation, arbitration or Lok Adalat have failed, the Judge shall make an attempt to inquire as to what progress was achieved and whether it will still be possible for the parties to better their offer for the purpose of resolving the dispute. This should invariably be done by the Judge at the first hearing when the matter comes back on failure of conciliation, mediation or Lok Adalat.

If the attempt is not successful, the issues shall be framed and the parties should be directed to file the affidavits of evidence in support of the cases within a period of three weeks. The affidavits should be examined by the contesting parties and on a date not later than two weeks thereafter the parties should indicate whether they propose to cross-examine any of the witnesses whose affidavits have been filed by way of evidence. They shall also indicate the likely duration for the evidence to be completed, and the arguments. The Judge shall ascertain the availability of time in court and will list the matter for trial on a date when it can go on from day to day and conclude both in respect of evidence and in respect of arguments. The possibility of further negotiation and settlement should be kept open and if such a settlement takes place, it should be open to the parties to move the Registrar for getting the matter listed at an earlier date for disposal.

6. Referral to Commissioner for recording evidence:

It is not necessary that the Court should appoint a commissioner for recording evidence in every case. Only if the recording of evidence is likely to take a long time or there are any other special grounds, should the Court consider appointing a commissioner for recording evidence and direct that the matter be listed for further orders fifteen days after the Commissioner files his report with the evidence. The Court may initially fix a period for the completion of the recording of the evidence by the commissioner and direct the matter to be listed on the date of expiry of the period so that the Court may know whether the parties are cooperating with the commissioner and whether the recording of evidence is getting unnecessary prolonged

7. Costs:

Awarding of costs must be treated generally as mandatory in as much as the liberal attitude of the Courts in directing parties to bear their own costs has led to a number of frivolous cases to be filed in Courts. Costs should invariably follow the event. Costs should be assessed on the basis of actual expenditure incurred by the parties in respect of counsel's fee, travel, production of witnesses, etc. If any of the parties have unreasonably

protracted the proceedings, the Judge should exercise the discretion to impose exemplary costs after taking into account the costs that may have been imposed at the time of adjournments.

8. Proceedings for Perjury:

If the Trial Judge, while delivering the judgment, is of the view that any of the parties or witnesses have wilfully and deliberately uttered falsehood, he shall invariably direct prosecution for perjury. If the Judge for any reason is of the view that notwithstanding false averments being made, prosecution is not to be initiated, he shall record the reasons for not directing prosecution.

9. Calling of Cases (Hajri or Call Work):

The present practice of calling all the cases listed on a particular day at the beginning of the day, in order to confirm attendance, or readiness of parties or counsel, consumes a lot of time of the Court. After such work, the Courts are left with very limited work to deal with cases listed before it. Formal listing should be before the Registrar. Listing before Courts should be based on a reasonable estimate of time and number of cases that can be disposed of by the Court in a particular day. The Courts shall therefore, dispense with the practise of calling all the cases listed before it merely to ensure attendance but shall proceed with the cases for the purposes it has been listed before it.

10. Adjournments:

The amendments to the CPC have restricted the number of adjournments to three times in the course of a suit, on reasonable cause being shown. When a suit is listed before a Court and any party seeks adjournment, the party seeking such adjournment shall pay appropriate costs to the other parties including the expenses of producing witnesses before the Court, if any.

11. Miscellaneous Applications:

The proceedings in a suit shall not be stayed on the filing of any Miscellaneous Applications in the course of suit unless the Court in its discretion expressly stays the proceedings in the suit.

III. <u>First Appeals</u>:

1. Service of Notice of Appeal:

First Appeals being appeals on questions of fact and law, courts are generally inclined to admit the appeal and it is only in exceptional cases that the appeal is rejected at the admission stage. In view of the amended CPC, a ‘copy’ of the memorandum of appeal is required to be filed in the sub-ordinate Court itself. Notice should simultaneously be given by the counsel for the party who is proposing to file the appeal, to the counsel for the opposite party in the sub-ordinate Court itself so as to enable them to appear if they so choose even at the first hearing stage. It has been clarified by the Supreme Court that the requirement of filing of appeal in the sub-ordinate Court does not mean that the party cannot move the Appellate Court immediately for obtaining interim orders. However, the First Appellate Court should, depending on the urgency or otherwise of the matter, insist

on proof of prior service while considering the grant of any interim orders. Failure to provide such proof should ordinarily disentitle the first appellant from getting such ex-parte interim orders unless there is sufficient cause for failure to produce proof of service.

The reasons why the court has not refused relief notwithstanding failure to provide proof of service, should invariably be recorded by the court while granting any ex-parte interim orders.

2. Documents to be filed with the Memorandum of Appeal:

The Appellant shall, along with the Memorandum of Appeal, file all the relevant documents. No new pleadings or documents shall be entertained in a First Appeal unless good cause is shown or there has been a change of circumstances from the time the suit was disposed of in the sub-ordinate Court, as provided in the Code.

3. Fixation of time limits and completion of pleadings:

Whenever notice is issued by the Court, the notice should indicate the date by which the reply should be filed. The rejoinder, if any, should be filed within three weeks of receipt of the reply. If there are more parties than one who are Respondents, each one of the Respondent should comply with this requirement within the time-limit and the rejoinder may be filed within three weeks from the receipt of the last reply.

The second hearing date in respect of the appeal, unless the Court otherwise directs, should be before the Registrar for the purpose of ensuring that the pleadings are complete and it is only after the completion of pleadings the application should be listed before Court. If, however, any of the parties desire that the matter should be placed before Court even before completion of pleadings since urgent orders are necessary, an office report may be prepared and the same may be placed before Court.

4. Procedure on grant of interim-orders:

If an interim order is granted at the first hearing by the Court, the Respondents would have the option of moving appropriate applications for vacating the interim order even before the returnable date indicated in the notice and if such an application is filed, it shall be listed as soon as possible even before the returnable date.

If the Court passes an ad-interim ex-parte order, and if the reply is filed by the Respondents and if, for any reason, the appellant fails to file the rejoinder, and as a result the pleadings are incomplete on the date appointed, the Court shall consider vacating the stay or interim order and list the case for that purpose. The appellant may also waive his right to file a rejoinder. Such exercise of option shall be conveyed to the Registrar on or before the date fixed for filing of rejoinder. Such communication of option by the applicant to the Registrar will be deemed to be completion of pleadings.

5. Printing or typing of Paper-books:

Printing or typing and preparation of paper-books by the court should be done away with. After notice is completed, counsel for both sides should agree on the list of documents and evidence to be printed and the same shall be made ready by the parties latest at the completion of two months of service of notice. Both the counsel should give

a list of original documents or material exhibits which need to be brought to the Appellate Court. It should not be necessary to bring all the original exhibits to the Appellate Court as a matter of course.

6. Filing of Written submissions:

Both the appellants and the respondents shall be required to submit their written submissions with all the relevant pages as per the court paper-book marked therein within a month of preparation of such paper-books. After the written submissions have been filed, the matter should be listed before the Registrar/Master for the parties to indicate the time that will be taken for arguments in the appeal. Alternatively, such matters may be listed before a judge in chambers for deciding the time duration and thereafter to fix a date of hearing on a clear date when the requisite extent of time will be available.

In the event that the matter is likely to take a day or more, no other case should be listed but the Court may consider having a Caution List/Alternative List to take note of eventualities where a case gets adjourned for unavoidable reasons or does not go on before a court, and those cases may be listed before the court where, for any reason, the scheduled cases are not taken up for hearing.

7. Costs:

Awarding of costs must be treated generally as mandatory in as much as it is the liberal attitude of Courts in not awarding costs that has led to frivolous appeals being filed in the Courts.

Costs should invariably follow the event. Costs should be assessed on the basis of actual expenditure incurred by the parties in respect of counsel's fee, travel, production of witnesses, etc. If any of the parties have unreasonably protracted the proceedings, the Judge should exercise the discretion to impose exemplary costs after taking into account the costs that may have been imposed at the time of adjournments.

IV. Application/ Petitions under Special Acts:

This chapter deals with applications / petitions filed under special acts like the Industrial Disputes Act, Hindu Marriage Act, Indian Succession Act etc.

The Practice direction in regard to Original Suits should *mutatis mutandis* apply in respect of such applications / petitions.

V. Accountability of Public Authorities:

When the Court, at any stage of the proceedings, finds that a public authority had been unreasonable in dealing with or settling the claim of any party in a writ, the Court shall record such conduct of the public authority in order to enable the appropriate authority to initiate suitable action against such public authority. The Court shall also impose costs on such public authority and shall make the officer personally responsible for such costs.

VI. Notice issued under S. 80 of Civil Procedure Code:

Every public authority shall appoint an officer responsible to take appropriate action on a notice issued under S. 80 of the Code of Civil Procedure. Every such officer shall take

appropriate action on receipt of such notice. If the Court finds that the concerned officer, on receipt of the notice, failed to take necessary action or was negligent in taking the necessary steps, the Court may hold such officer responsible for negligence in its duty and impose costs on such officer personally.

VII. Criminal trial and Criminal Appeals:

Criminal Trials

1. Criminal Trials should be classified based on offence, sentence and whether the accused is on bail or in jail. Capital punishment cases should be kept in Track I. Other cases where the accused is not granted bail and is in jail, should be kept in Track II. Cases which affect a large number of persons such as cases of mass cheating, economic offences, illicit liquor tragedy, food adulteration cases, offences of sensitive nature including rape, should be kept in Track III. Offences which are tried by special courts such as POTA, TADA, NDPS, Prevention of Corruption Act, etc. should be kept in Track IV. Track V – all other offences.

The endeavour should be to complete Track I cases within a period of six months, Track II cases within nine months, Track III within a year, Track IV within fifteen months.

2. The High Court may classify criminal appeals also in different tracks on the same lines mentioned above.

Criminal Appeals :

3. Wherever an appeal is filed by a person in jail, and also when appeals are filed by State, the complete paper-books including the evidence, should be filed by the State within one month of admission of the appeal. Both the counsel should give a list of original documents or material exhibits which need to be brought to the Appellate Court. It should not be necessary to bring all the original exhibits to the Appellate Court as a matter course.

4. Steps for appointment of *amicus curie* or State Legal Aid counsel in respect of the accused who do not have a lawyer of their own should be undertaken by the Registry immediately after completion of four weeks of service of notice. It shall be presumed that in such an event the accused is not in a position to appoint counsel, and within two weeks thereafter counsel shall be appointed and shall be furnished all the papers.

5. Notice should simultaneously be given by the counsel for the party who is proposing to file the appeal, to the counsel for the opposite party in the sub-ordinate Court, so as to enable the other party to appear if they so choose even at the first hearing stage. The Appellate Court should insist on proof of prior service while considering the grant of any interim orders. Failure to provide such proof should ordinarily disentitle the appellant from getting such ex-parte interim orders unless there is sufficient cause.

6. The reasons why the court has not refused relief notwithstanding failure to provide proof of service, should invariably be recorded by the court while granting any ex-parte interim orders.

7. Whenever notice is issued by the Court, the notice should indicate the date by which the reply should be filed. The rejoinder, if any, should be filed within two weeks of receipt of the reply. If there are more parties than one who are Respondents, each one of the Respondent should comply with this requirement within the time-limit and the rejoinder may be filed within two weeks from the receipt of the last reply.

8. If an interim order is granted at the first hearing by the Court, the Respondents would have the option of moving appropriate applications for vacating the interim order even before the returnable date indicated in the notice and if such an application is filed, it shall be listed as soon as possible even before the returnable date.

9. If the Court passes an ad-interim ex-parte order, and if the reply is filed by the Respondents and if, for any reason, the appellant fails to file the rejoinder, and as a result the pleadings are incomplete on the date appointed, the Court shall consider vacating the stay or interim order and list the matter for that purpose. The appellant may also waive his right to file a rejoinder. Such exercise of option shall be conveyed to the Registrar on or before the date fixed for filing of rejoinder. Such communication of option by the applicant to the Registrar will be deemed to be completion of pleadings.

VIII. Note

Wherever there is any inconsistency between these rules and the provisions of the either the Code of Civil Procedure, 1908 or Code of Criminal Procedure, 1973 or the High Court Act, or any other statutes, the provisions of such Codes and statutes shall prevail.

B. DRAFT CASE FLOW MANAGEMENT RULES IN HIGH COURT

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In exercise of the power conferred by article 225 of the Constitution of India and Chapter X of the Code of Civil Procedure, 1908 (5 of 1908) and section ….. of the …… High Court Act and all other powers enabling, the …… High Court hereby makes the following Rules;

I. Division of cases into tracks

1. The High Court shall, at the stage of admission or issuing notice before admission, categorise the Writ Petitions (other than Writs of Habeas Corpus), into three categories depending on the urgency with which the matter should be dealt with : the Fast Track, the Normal Track and the Slow Track. The petitions in the Fast Track shall invariably be disposed of within a period of three months while the petitions in the Normal Track should not take longer than a year. The petitions in the Slow Track, subject to the pendency of other cases in the Court, should ordinarily be disposed of within a period of two years.
Non writ matters, where any interim order of stay or injunction is granted in respect of liability to tax or demolition or eviction from public premises, etc. shall be put on the Fast Track. Similarly all matters involving tenders would also be put on the Fast Track. These matters cannot brook delays in disposal. The High Court may make rules in respect of the different kinds of matters so as to constitute guidelines for allocating different classes of cases to different tracks.

2. The Court or a judge or judges of the Court nominated for the purpose shall at intervals of every month monitor the stage of each case allocated to the different tracks and take appropriate decisions with a view to ensure that the cases are disposed of within the period fixed for each track.

3. The Court or the judge or judges, referred to in clause (2) above may shift a case from one track to another depending upon the complexity and other circumstances of the case.

4. Where computerization is available, data will be fed into the computer in such a manner that the Court or judge or judges, referred to in clause (2) above, will be able to ascertain the position and stage of every case in every track from the computer screen.

5. The court or the judge or judges, referred to in clause (2) above, shall keep control of the flow of every case, either from the register or from the computer.

6. The High Court shall also divide civil appeals in the High Court into different tracks on the lines indicated in sub clauses (2) to (5) above and the said clauses shall apply, *mutatis mutandis*, to civil appeals filed in the High Court.

7. Division of criminal petitions and appeals into different tracks is dealt with separately under the heading ‘criminal petitions and appeals’

1I. Writ of Habeas Corpus:
Notices in respect of Writ of Habeas Corpus where the person is in custody under orders of a State Government or Central Government, shall invariably be issued by the Court at the first

listing and shall be made returnable within 48 hours. State Government or Central Government may file a brief return enclosing the relevant documents to justify the detention. The matter shall be listed after notice on the fourth working day after issuance of notice, and the Court shall consider whether a more detailed return to the Writ is necessary, and, if so required, shall grant further time of a week and thereafter three days' time for filing a rejoinder. A Writ of Habeas Corpus shall invariably be disposed of within a period of fifteen days.

In a petition for Writ of Habeas Corpus addressed to private persons where the illegal custody is alleged to be with a private party and not of the Governmental authorities, the Court shall initially consider and exercise discretion whether such a Writ Petition should be entertained and notice should be issued.

Such Writ Petitions will invariably be disposed of within a period of a month after giving two weeks' time to the private respondents for filing a counter and a week's time to the Petitioner for filing rejoinder.

III. Other writ petitions

The Court rules will provide for advance service of notice on the Respondents against whom interim orders are sought. Such advance service shall be not merely on the Governments or public sector undertakings who have Standing Counsel, but even on private parties, depending upon the urgency or otherwise of the matter and circumstances of the case.

IV. Civil Appeals

Civil Appeals may be broadly classified into four categories: First Appeals, Second Appeals, LPAs and Special Appeals under various Acts.

First Appeals

1. Service of Notice of Appeal:

First Appeals being appeals on questions of fact and law, courts are generally inclined to admit the appeal and it is only in exceptional cases that the appeal is rejected at the admission stage. In view of the amended CPC, a 'copy' of the memorandum of the appeal is required to be filed in the Trial Court itself. Notice should simultaneously be given by the counsel for the party who is proposing to file the appeal, to the counsel for the opposite party in the Trial Court itself so as to enable them to appear if they so choose even at the first hearing stage. It has been clarified by the Supreme Court that the requirement of filing of appeal in the Trial Court does not mean that the party cannot move the High Court immediately for obtaining interim orders. However, the First Appellate Court should, depending on the urgency or otherwise and the circumstances of the case, insist on proof of prior service while considering the grant of any interim orders. Failure to provide such proof should ordinarily disentitle the first appellant from getting such ex-parte interim orders unless there is sufficient cause for failure to produce proof of service.

The reasons why the court has not refused relief notwithstanding failure to provide proof of service, should invariably be recorded by the court while granting any ex-parte interim orders.

2. Filing of Documents:
The Appellant shall, on the appeal being admitted, file all the relevant papers within a period of three months. No new pleadings or documents shall be entertained in a First Appeal unless good cause is shown or there has been a change of circumstances from the time the suit was disposed of in the Trial Court, as provided in the Code.

3. Printing or typing of Paper Book:
Printing or typing and preparation of paper-books by the court should be done away with. After notice is completed, counsel for both sides should agree on the list of documents and evidence to be printed or typed and the same shall be made ready by the parties latest at the completion of three months of service of notice. Thereafter, the paper book will be readied.

4. Filing of Written Submissions:
Both the appellants and the respondents shall be required to submit their written submissions referring to relevant pages as per the court paper-book marked therein within a month of preparation of such paper-books, referred to in para 3 above. After the written submissions have been filed, the matter should be listed before the Registrar/Master for the parties to indicate the time that will be taken for arguments in the appeal. Alternatively, such matters may be listed before a judge in chambers for deciding the time duration and thereafter to fix a date of hearing on a clear date when the requisite period of time will be available.

In the event that the matter is likely to take a day or more, no other case should be listed for final hearing but the High Court may consider having a Caution List/Alternative List to meet eventualities where a case gets adjourned due to unavoidable reasons or does not go on before the court, and those cases may be listed before the court where, for one reason or another, the scheduled cases are not taken up for hearing.

5. Court may explore possibility of settlement:
At the first hearing of the First Appeal when both parties appear, the Court shall make an attempt to explore the possibility of a settlement. If the parties are agreeable even at that stage for mediation or conciliation, the High Court should make a reference for the said purpose. Alternatively, if the parties had attempted a conciliation or mediation in the Trial Court and if the same had not been successful, the High Court should ask the parties about the progress made in the conciliation/mediation and see whether they are willing to improve the offer made in the lower court and to settle it.

If necessary, the process contemplated by Section 89 of CPC may be resorted to by the First Appellate Court so, however, that the hearing of the appeal is not delayed. Whichever is the ADR process adopted, the Court should fix a date for a report on the ADR two months from the date of reference.

<u>Letters Patent Appeals (LPA) or similar appeals under High Court Acts:</u>

LPA may lie from any of the following:

(1) appeals from interlocutory orders of the Single Judge in original jurisdiction in writs and other matters; (2) appeals from final judgments of a Single Judge in Writ Petitions; and (3) appeals from final judgment of a Single Judge on the Original Side of the High Court

Appeals against interlocutory orders should be invariably filed after notice to the other side so that both the sides will be represented at the very first hearing of the appeals. The endeavour of the court should be to dispose of the LPA against interlocutory orders at the very first hearing. If, for any reason, this is not practicable, such appeals should be disposed of within a period of a month since the progress of the main case will be impeded by the pendency of the LPA.

All necessary documents should be kept ready by the counsel to enable the court to dispose of the matter at the first hearing itself.

In all Appeals in the High Court, in writs and civil matters, the Court should endeavour to set down and observe a strict time-limit in regard to oral arguments. In case of Original Side appeals/LPAs arising out of final orders in a Writ Petition or in civil suits filed in the High Court, a flexible time schedule may however be followed.

The practice direction in regard to First Appeal should *mutatis mutandis* apply in respect of LPAs/Original Side appeals against final judgments of the Single Judge.

Writ Appeals/Letters Patent Appeals arising from orders of the Single Judge in a Writ Petition should be filed with simultaneous service on the counsel for the opposite party who had appeared before the Single Judge.

Writ Appeals against interim orders of the Single Judge should invariably be disposed of at the first hearing and, at any rate, within a period of fifteen days from the first hearing. Writ Appeals against final orders in Writ Petitions should be accompanied by brief written submissions and in case the Writ Appeal is admitted or notice is issued, the respondent should also be required to file the written submissions within two weeks thereafter.

V. Second Appeals:

Even at the stage of admission, the questions of law with a brief synopsis and written submissions on each of the propositions should be filed by the appellant so as to enable the court to consider whether there is a substantial question of law. The appeal should not be entertained unless such written submissions are filed. Wherever the court is inclined to entertain the appeal, notice shall be given and if caveator is not present, notice shall be given to the party respondent as well as to the counsel who had appeared in the First Appeal court. The notice should require the setting out of the substantial questions of law and should require the respondents to file their written submissions within a period of four weeks from service of notice. Efforts should be made to complete the hearing of the Second Appeals within a period of six months.

VI. Civil Revisions:

A revision petition may be filed under section 115 of the Code or under any special statute In some High Courts, petitions under Article 227 of the Constitution of India are registered as civil revision petitions . The practice direction in regard to LPAs and First Appeals to the High Courts, should *mutatis mutandis* apply in respect of revision petition.

VII. Criminal Appeals:

Criminal Appeals should be classified based on offence, sentence and whether the accused is on bail or in jail. Capital punishment cases should be kept in Track I. Other cases where the accused is not granted bail and is in jail, should be kept in Track II. Cases which affect a large number of persons such as cases of mass cheating, economic offences, illicit liquor tragedy, food adulteration cases, offences of sensitive nature including rape, should be kept in Track III. Offences which are tried by special courts such as POTA, TADA, NDPS, Prevention of Corruption Act, etc. should be kept in Track IV. Track V – all other offences.

The endeavour should be to complete Track I cases within a period of six months, Track II cases within nine months, Track III within a year, Track IV within fifteen months.

Wherever an appeal is filed by a person in jail, and also when appeals are filed by State, the complete paper-books including the evidence, should be filed by the State within one month of admission of the appeal. Both the counsel should give a list of original documents or material exhibits which need to be brought to the Appellate Court. It should not be necessary to bring all the original exhibits to the Appellate Court as a matter course.

Steps for appointment of *amicus curie* or State Legal Aid counsel in respect of the accused who do not have a lawyer of their own should be undertaken by the Registry immediately after completion of four weeks of service of notice. It shall be presumed that in such an event the accused is not in a position to appoint counsel, and within two weeks thereafter counsel shall be appointed and shall be furnished all the papers.

VIII. Note

Wherever there is any inconsistency between these rules and the provisions of the either the Code of Civil Procedure, 1908 or Code of Criminal Procedure, 1973 or the High Court Act, or any other statutes, the provisions of such Codes and statutes shall prevail.