

CHAPTER-XI

Criminal Business

A- General

1. Chapter-IV applicable.- ¹[(1)] The ²[rules] in Chapter IV shall apply, as far as possible, to applications made under this Chapter.

³[(2)] The functions of the Registrar under this Chapter, except those mentioned in rule 18, may be performed by ⁴[the Assistant Registrar], who may from time to time, be placed in charge of the Criminal Section.

⁵[2. Notice of appeal and reference to Solicitor and D.C.-] (1) A copy of every notice issued on admitting an appeal, the copies of notices issued on receipt of references under section 374, Criminal Procedure Code, or any other law, and in all other classes of criminal cases (except revision cases) in which the Court directs issuance of notice, shall be sent to the Solicitor of the Government of Bangladesh and the Deputy Commissioner of the concerned District.]

(2) In an appeal under the Foreign Exchange Regulation Act, 1947 (Act VII of 1947) a copy of such notice shall also be sent to the Governor of Bangladesh Bank and the Secretary of the Finance Division, Ministry of Finance, Government of Bangladesh.

(3) The appellant/petitioner in criminal matters shall file as many legible true copies of the petition of appeal/application as there are the respondent/opposite party, for service of notice of the appeal/application, and such copies shall be filed within a

¹ Sub-rule (1) was re-numbered for sub-rule (a) by Notification No. 181-G dt. 22-10-2012.

² The word "rules" was substituted for the word "Rules" by Notification *ibid*.

³ Sub-rule (2) was re-numbered for sub-rule (b) by Notification *ibid*.

⁴ The words "the Assistant Registrar" were substituted for the words "any Gazetted Officer" by Notification *ibid*.

⁵ Rule 2 was substituted for the original rule 2 by Notification *ibid*.

period of 3 (three) working days from the date of admission of appeal/issuance of the rule/order, unless the Court directs otherwise.]

3 to 5. [Omitted by Notification No. 181-G dt. 22-10-2012.]

¹[6. Time for service of notice and record.- In every criminal appeal or revision, generally 10 days' time shall be given for calling for the records and service of notices, and in appropriate cases the concerned Bench may extend or shorten the time limit.]

²[6A. Typed/printed deposition sheet from Subordinate courts.- When records of the Subordinate Courts are called for, the concerned Presiding Judge shall ensure that the copies of the deposition of all witnesses are typed/printed and sent with records.

Note.- To ensure implementation of rule 6A, the Registrar shall, from time to time, issue circular letters that judges of subordinate courts should regularly maintain such typed/ printed copies.]

³[7. Advance order without Judgment.-(1) Where in a case-

- (a) an accused person is ordered by the High Court Division to be released from jail or discharged from bail bond or to surrender to the appropriate court to serve out the sentence of imprisonment imposed upon him on being convicted by the High Court Division on reference or on appeal, or on the dismissal of an appeal made by him; or
- (b) the capital sentence is confirmed, modified, set aside or imposed on an accused person by the High Court Division, necessary order shall be sent down to the subordinate court in Form No. I (Criminal), Appendix II, without waiting for the judgment to be signed.

¹ Rule 6 was substituted for the original rule 6 by Notification No. 181-G dt. 22-10-2012.

² Rule 6A along with the note was inserted by Notification *ibid*.

³ Rule 7 was substituted for the original rule 7 by Notification *ibid*.

(2) An order under sub-rule (1) shall not be communicated by telegram, telephone, radiogram, Fax or any other electronic method.]

¹[8. Notice to Solicitor in transfer cases.- In cases in which an accused person makes an application to the Court for the transfer of his case from one Subordinate Court to another, the accused person, or the Advocate acting on his behalf, shall file with the application a receipt showing that a notice of the application has been given to the Solicitor for the purposes of section 526(6), Criminal Procedure Code, and such receipt of notice must bear the signature of a responsible officer of the office of the Solicitor of the Government of Bangladesh, and also the office seal acknowledging receipt of the notice and noting the time of receipt.]

9. Application to be filed with Bench Officer.- Unless the Court otherwise directs, an application which is presented to the Court shall, in the first instance, be given to the ²[Bench Officer], who shall satisfy himself that it is properly stamped, and is in proper and regular form. If he is not so satisfied he shall return it at once to the Advocate concerned.

B - Cases involving Capital Sentences.

³[10. Notice of death reference/appeal involving death penalty.- On receipt of a reference under section 374 of the Criminal Procedure Code, or under any other law or on the admission of an appeal under section 417 of the Criminal Procedure Code against the acquittal of an accused on a charge of murder, the Registrar shall at once give notice in Form Nos. 3 and

¹ Rule 8 was substituted for the original rule 8 by Notification No. 181-G dt. 22-10-2012.

² The words "Bench Officer" were substituted for the words "Bench Clerk" by Notification *ibid*.

³ Rule 10 was substituted for the original rule 10 by Notification *ibid*.

4 (Criminal), Appendix II, to the prisoner or the accused (respondent) through the Chief Judicial/ Chief Metropolitan Magistrate, as the case may be, of the date fixed for hearing of such matter.]

11. Registration of death reference/appeal.-After notice ¹[is] given in the manner prescribed by rule 10 above ²], and the subordinate court record has been received], the Registrar shall cause the record to be examined and entered in the prescribed Register.

12. Preparation of Paper-book of death reference etc. by Registrar.-If the record is in order, the Registrar shall at once cause the ³[paper-book to be printed containing the materials as specified in rule 13] without delay for the use of the ⁴[Division Bench] at the hearing.

⁵[**Explanation:** In this rule the word "print" includes computer print or print by other means].

⁶[**13. Contents of Paper-book.**- The paper-book shall contain the following papers:

- (a) order-sheet;
- (b) the first information report or the petition of complaint;
- (c) statement under section 164, Cr.P.C. or similar provision of any other law, if any;

¹ The word "is" was substituted for the words "has been" by Notification No. 181-G dt. 22-10-2012.

² The expression ", and the subordinate court record has been received" was inserted by Notification *ibid*.

³ The expression "paper-book to be printed containing the materials as specified in rule 13" was substituted for the words "record of the Sessions Court to be printed" by Notification *ibid*.

⁴ The words "Division Bench" were substituted for the words "Division Court" by Notification *ibid*.

⁵ Explanation was added by Notification No. 11308-G, The Bangladesh Gazette, April 1, 2004.

⁶ Rule 13 was substituted for the original rule 13 by Notification No. 181-G dt. 22-10-2012.

- (d) police report, if any;
- (e) charge framed;
- (f) examination under sections 342, Cr.P.C. if any and any document or written statement produced by the accused, if submitted during such examination;
- (g) oral and documentary evidence including post mortem report, Chemical Examiner's report, inquest report (if any), injury report and Map (if any) admitted in evidence by the trial Court/ Tribunal;
- (h) the judgment of the trial Court/Tribunal;
- (i) petition of appeal (if any); and
- (j) the letter of reference in the case of a reference.]

14. 20 copies of Paper-book and distribution.-

Ordinarily 20 copies of the paper-book shall be printed, 8 copies of which shall be for the use in the ¹[High Court Division] and 12 copies to be preserved in a sealed cover in the Criminal Section for the use ²[in the Appellate Division in the event of an] appeal being filed. Immediately on receipt of the paper-book the Registrar shall cause two copies to be sent to the ³[Solicitor of the Government of Bangladesh]. If spare copies of the printed paper-books are available and parties, other than the accused, apply for them, they may be sold at the rate of ⁴[Tk.2/-] per page, subject to a maximum charge of ⁵[Tk.500/-] per paper-book.

15. Actions in case of confirmation of death sentence.- In any case in which a sentence of death has been confirmed or passed by the ⁶[Division Bench], two copies of the printed paper-book of the case, together with two copies of the judgment of the ⁷[Division Bench] shall be forwarded to the

¹ The words "High Court Division" were substituted for the words "High Court" by Notification No. 181-G dt. 22-10-2012.

² The words "in the Appellate Division in the event of an" were substituted for the words "of the Supreme Court in the event of a Supreme Court" by Notification *ibid*.

³ The words "Solicitor of the Government of Bangladesh" were substituted for the words "Superintendent and Remembrancer of Legal Affairs" by Notification *ibid*.

⁴ The expression "Tk.2/-" was substituted for the words "six annas" by Notification *ibid*.

⁵ The expression "Tk.500/-" was substituted for the expression "Rs.20" by Notification *ibid*.

⁶ The words "Division Bench" were substituted for the words "Division Court" by Notification *ibid*.

⁷ The words "Division Bench" were substituted for the words "Division Court" by Notification *ibid*.

¹[Solicitor] immediately after the issue of the warrant, confirming
²[or passing] the sentence.

C- Appeals ⁸[& Jail Appeals]

16. Appeal petition to be presented to Registrar.-A
³[petition of] criminal appeal, other than a jail appeal, shall be presented to the Registrar.

17. Registrar's duty when appeal petition presented.-The
 Registrar shall endorse on such petition of appeal, the date of presentation, and if the petition of appeal is not barred by limitation, is sufficiently stamped and is otherwise in order, he shall cause it to be registered and laid before the Bench without delay.

18. Return of time barred appeal petition etc.-If the
 Registrar finds that an appeal is barred by limitation, he shall forthwith ⁴[return the petition of appeal to the filing Advocate of the appellant or to the appellant]. If the Registrar finds that the ⁵[petition] of Appeal is insufficiently stamped, or is not in proper order, he shall ⁶[,] upon the matter being laid before him:

- (a) in the case of a ⁷[petition of appeal] which is insufficiently stamped, fix a period within which the additional fee required may be paid, provided that the period of limitation has not expired; or if such period

¹ The word "Solicitor" was substituted for the words "Provincial Government" by Notification No. 181-G dt. 22-10-2012.

² The words "or passing" were inserted by Notification *ibid*.

³ The words "petition of" were inserted by Notification *ibid*.

⁴ The words "return the petition of appeal to the filing Advocate of the appellant or to the appellant" were substituted for the words "lay the same before the Court for orders" by Notification *ibid*.

⁵ The word "petition" was substituted for the word "memorandum" by Notification *ibid*.

⁶ Comma was inserted by Notification *ibid*.

⁷ The words "petition of appeal" were substituted for the word "memorandum" by Notification *ibid*.

⁸ The Words "& Jail Appeals" were inserted by Notification *ibid*.

has expired, lay the ¹[petition of appeal] before the Court for orders;

- (b) in the case of a ²[petition of appeal] which is not in proper form, fix a period within which such ³[petition of appeal] must be amended or lay the same before the Court for orders.

4[19. Procedure after admission of appeal.]-(1) Where an appeal is admitted by the concerned Bench, the Registrar shall follow the following procedure:

- (a) cause notice(s) to be served upon the respondent(s) in Form No. 5 (Criminal), Appendix II, as directed by the said Bench;
- (b) upon receipt of the subordinate court record, if called for by the concerned Bench, the Registrar shall cause to be prepared by the concerned Section 3(three) copies of paper-book containing the documents mentioned in rule 13, so far as may be applicable;
- (c) after service of notice(s) upon the respondent(s) and preparation of the paper-book, the concerned Section shall record a note that the appeal is ready for hearing;
- (d) after recording the said note, the Registrar shall, if the appeal is not included in the list of a competent Bench for hearing, cause it to be included in the Quarterly List and shall place such List before the Monitoring Committee for the High Court Division, which will make necessary recommendation to the Chief Justice for inclusion of the appeal in the list of an appropriate Bench. Any competent Bench may on its own motion direct the Section to send ready cases for hearing and disposal.

¹ The words "petition of appeal" were substituted for the word "memorandum" by Notification No. 181-G dt. 22-10-2012.

² The words "petition of appeal" were substituted for the word "memorandum" by Notification *ibid*.

³ The words "petition of appeal" were substituted for the word "memorandum" by Notification *ibid*.

⁴ Rule 19 was substituted for the original rule 19 by Notification *ibid*.

(2) Where in an appeal the subordinate court record is not called for, the provisions of sub-rule (1) for preparation of paper-book shall not apply.

(3) Inclusion of an appeal for hearing in the Cause List shall constitute sufficient notice as required under section 422 of the Criminal Procedure Code.

(4) No paper-book will be necessary in a case where an Advocate does not appear or where the appeal is admitted on the question of sentence only; or in a case which may be heard by a Single Bench under sub-rule (2) of rule 7, Chapter II of these Rules.

(5) The appellant shall be entitled to get a copy of the paper-book free of cost. If more than one appeal arises from the same judgment, the appellant of the appeal which becomes ready at first shall be entitled to such copy. Other appellant(s) may, however get photocopies of the paper-book at their own cost.]

20. [Omitted by Notification No. 181-G dt. 22-10-2012.]

21. Receiving Jail appeals.- Jail appeals may be received by post. In the case of such appeals the Registrar shall cause a translation of the petition of appeal to be prepared ¹[in Bangla or English, if the petition is in any other language and shall submit it to the relevant Bench for orders within 30 days of receipt of petition].

22. Procedure after admission of Jail appeal.- If a Jail appeal is admitted, it shall be dealt with in the manner prescribed for appeals which are filed in Court.

¹ The expression "in Bangla or English, if the petition is in any other language and shall submit it to the relevant Bench for orders within 30 days of receipt of petition" was substituted for the expression "(if necessary) and shall submit it to the Bench for orders" by Notification No. 181-G dt. 22-10-2012.

¹[D- Revisions and applications under section 491.]

23. Mode of taking Criminal Revisions.-Cases (other than those mentioned in the preceding rules of this Chapter) may be taken up in revision in the following way:-

- (a) [Omitted by Notification No.181-G dt. 22-10-2012.]
- (b) Upon a petition presented to a Bench; and
- (c) Upon an information which otherwise comes to the knowledge of the Bench.

²[24. Court's direction for report and its compliance.-

Where the Court directs a subordinate court to send a report on any matter relating to the subordinate court records, the Registrar shall, on receipt of the report, examine the same and satisfy himself about the compliance with the direction and shall cause a notice to be recorded on the matter and in case of non-compliance or part-compliance with the direction, the Registrar shall place the matter before a competent Bench.]

³[25. Typed/printed deposition sheet from subordinate

court.- Where in a revision, the subordinate court's record is called for, the concerned subordinate court, shall send typed/printed copies of the deposition of witnesses recorded during trial.]

26. [Omitted by Notification No. 181-G dt. 22-10-2012.]

27. Provisions relating to appeal apply.-The Provisions of ⁴[rules 16-22] of this Chapter shall apply as far as possible to applications for revision ⁵[, except the preparation of paper-book].

¹ The heading "D- Revisions and Applications under Section 491" was substituted for the heading "D- Revisions and References" by Notification No. 181-G dt. 22-10-2012.

² Rule 24 was substituted for the original rule 24 by Notification *ibid*.

³ Rule 25 was substituted for the original rule 25 by Notification *ibid*.

⁴ The expression "rules 16-22" was substituted for the expression "of Part C" by Notification *ibid*.

⁵ The expression ", except the preparation of paper-book" was inserted by Notification *ibid*.

1[28. Habeas Corpus application to Division Bench.-

(1) All applications for orders or directions, under clauses (a), (b), (c) or (e) of section 491 of the Criminal Procedure Code, shall be made before the Division Bench taking the Criminal business in the High Court Division.

(2) Such applications shall be made through an Advocate or in person.

(3) The application shall be supported by a duly verified affidavit setting forth the circumstances under which the order/direction is sought.]

29 and 30. [Omitted by Notification No.181-G dt. 22-10-2012.]

2[31. Application regarding detained person and warrant.- Where the application is for an order under clause (c) of section 491 of the Criminal Procedure Code, it shall state the place at which the prisoner is detained, if known and the purpose for which his evidence is required, and whether that prisoner is necessary to be produced, and if the Court is satisfied about such production, and makes an order under that clause, a warrant shall be issued in Form No. 7 (Criminal), or Form No. 8 (Criminal), or Form No. 9 (Criminal) of Appendix II, as the case may be.]

32. Application by Court-martial etc. about detained person.-Where an order under clause (d) of ³[section] 491 of the Criminal Procedure Code is required⁴], the Court-martial or the Commissioners may send an application to this Court in writing and in such a case an affidavit shall not be required. The application shall be in the form of a letter addressed to the Registrar, stating the purpose for which the said Court-martial has been assembled or the authority under which the said Commissioners are acting, and also stating where the prisoner is

¹ Rule 28 was substituted for the original rule 28 by Notification No. 181-G dt. 22-10-2012.

² Rule 31 was substituted for the original rule 31 by Notification *ibid*.

³ The word "section" was substituted for the word "Section" by Notification *ibid*.

⁴ Comma was inserted by Notification *ibid*.

detained in custody, and when, where, and for what purpose he is required to be produced. It shall be the duty of the Registrar to submit the letter, as soon as possible after the receipt thereof to, and to obtain the order thereon, of the Judges presiding over the ¹[concerned Bench].

33. Notice to prisoner.-Where the application is for an order under clause (e) of ²[section] 491 of the Criminal Procedure Code, notice of the application shall be served on the prisoner and it shall be stated in the affidavit where the prisoner is detained in custody, to what other custody it is proposed to remove him and the reason for such change of custody.

34. [Omitted by Notification No. 181-G dt. 22-10-2012.]

35. Warrant for production of detained person.-In any case in which the Court ³[orders] a person in custody to be brought either before it, or before a Court-martial, or before Commissioners ⁴[.] or to be removed from one custody to another, a warrant ⁵[in Form No. 10 (Criminal), Appendix II] shall be prepared and signed by the Registrar and sealed with the seal of the Court.

36. Sending of warrant to jail authority etc.-⁶[A warrant] issued under rule 32 above, shall be forwarded by the Registrar to the Officer-in-Charge of the Jail in which the prisoner is confined; in every other case the warrant shall be served personally upon the person to whom it is directed or otherwise as the Court ⁷[orders].

¹ The words "concerned Bench" were substituted for the words "Criminal Bench of this Court" by Notification No. 181-G dt. 22-10-2012.

² The word "section" was substituted for the word "Section" by Notification *ibid*.

³ The word "orders" was substituted for the words "shall order" by Notification *ibid*.

⁴ Comma was substituted for semicolon by Notification *ibid*.

⁵ The expression "in Form No. 10 (Criminal), Appendix II" was inserted by Notification *ibid*.

⁶ The words "A warrant" were substituted for the words "Such warrant where" by Notification *ibid*.

⁷ The word "orders" was substituted for the word "order" by Notification *ibid*.

37. Copy of warrant/affidavit to be attached with.-

Where the application is ¹[for production before the Court of] a person in custody under a warrant to detain such person, a copy of the warrant under which he is detained, obtained from and authenticated by the signature of the person in whose custody the applicant is, shall be produced to the Court, or it shall be shown by affidavit that it has been asked for, and denied.

38. Issuance of Rule.-Where the Court is of opinion that a *prima facie* case ²[is made out, a Rule] may be issued calling upon the person, or persons against whom the order is sought to appear on a day to be ³[specified] therein to show cause why such order should not be made and at the same time to produce in Court the body of the person or persons alleged to be illegally or improperly detained then and there to be dealt with according to law.

39. [Omitted by Notification No. 181-G dt. 22-10-2012.]

40. Disposal of Rule.-(1) In disposing of any such rule the Court may, in addition to an order relating to the detainee or prisoner, make further order in its discretion for payment by one side or the other of the costs of the Rule.

(2) If the Rule is discharged and the prisoner or detainee is required to be sent back to appropriate custody, the said prisoner or the detainee shall be so sent back and for this purpose Form No. 11 (Criminal), Appendix-II shall be used.]

41. Form of warrants.-The ⁵[Forms of warrant] Nos. 7 to 11 (Criminal) in Appendix-II, shall be followed.

¹ The words "for production before the Court of" were substituted for the words "to bring up before the Court" by Notification No. 181-G dt. 22-10-2012.

² The expression "is made out, a Rule" was substituted for the expression "for granting the application is made out, a Rule *nisf*" by Notification *ibid*.

³ The word "specified" was substituted for the word "named" by Notification *ibid*.

⁴ Rule 40 was substituted for the original rule 40 by Notification *ibid*.

The words "Forms of warrant" were substituted for the words "forms of warrants" by Notification *ibid*.

¹[Chapter-XIA**Special Original Jurisdiction Under article 102 of the Constitution**

1. Form of application under article 102.- Every application /petition for a direction, order or declaration, under article 102 of the Constitution shall be in the form of a petition neatly typed on stout bluish/cartridge paper of A-3/legal size with a margin of two inches, containing about 20(twenty) lines on each full page and the application shall be divided into paragraphs, and numbered consecutively and shall be typed only on one side of the paper. In preparing the writ petition, the Form No.1 (Writ), Appendix IV shall be followed.

2. Paper to be used for application etc. - Every such application/ petition shall be filed together with two unstamped plain copies thereof typed on stout paper of A-3/legal size.

3. Contents of application.- Every such application/petition shall set out concisely, the facts upon which the petitioner relies, the grounds upon which the Court is asked to issue the direction, order or declaration, his right in the matter in question, his demand of justice and the denial thereof and shall conclude with a prayer stating, as clearly as the circumstances permit, the exact nature of the relief or relieves sought for.

4. Statement about previous presentation of application.- Every such application/petition shall contain a statement at the end of the averments to the effect that the application/petition was not previously presented before any other Bench.

¹ Chapter XIA was inserted by Notification No. 181-G dt. 22-10-2012.

N.B. This Chapter contains more or less rules similar to the rules as contained in Appendix-IV before amendment by Notification *ibid*.

5. Application with affidavit and necessary documents.- (1) Every such application/petition shall be verified by an affidavit of the petitioner himself or the person injured or by any person who is competent to represent the aggrieved person with the prior leave of the Court on its being satisfied that the said aggrieved person is unable to swear such an affidavit personally.

(2) The following document(s) shall be annexed to such application:-

- (a) where objection is taken to an order of any person, authority or Government or an officer or department of Government, or a Tribunal, Board, Commission or other body, appointed by Government, an authenticated copy of the order or notification complained of;
- (b) where an objection is taken to any judgment or order of a Court or an officer thereof, a certified copy of such judgment or order, and where there has been an appeal or revision from such judgment or order also a certified copy of the judgment or order of the higher Court/authority.

6. Declaration in affidavit.- Such affidavit shall contain a declaration to the effect that the statements made in the petition are true to the best of the deponent's knowledge and belief. Every affidavit should clearly express how much the statement is of the deponent's knowledge and how much is a statement made on his information or belief and must also state the source or ground of the information or belief with sufficient particularity.

7. Presentation of application to Commissioner.- Every such application/petition, before presentation to the Court, shall be produced before the Commissioner of Affidavits as provided in Chapter IVA relating to Motion and Mention.

8. Presentation of application as motion.-Every such application/petition shall be presented as a Motion in accordance with chapter IVA before a Division Bench appointed by the Chief Justice from time to time.

9. Form of notice of Rule Nisi.- (1) Where the Court issues a Rule Nisi, the same shall be issued in the Form No.2(Writ), Appendix IV and notice of the Rule Nisi shall be served personally, if possible, upon the parties to whom the Rule Nisi is issued and such notice shall be issued for service simultaneously by process server and also by registered post with acknowledgement due. After 30 days of despatch of the notice by registered post, the notice may be deemed to have been duly served.

(2) Where the respondent does not appear, the Court shall, before fixing a case under this Chapter for hearing, satisfy itself about the service of notice upon the parties.

10. Notice and Rule Nisi on letter, news report etc.- (1) If a Motion Bench dealing with writ matters, on going through a letter, which is signed by any person with his address and sent to the Chief Justice or any other Judge or the Court or Registrar or, any report published in a newspaper or other media, is satisfied that a public wrong of grave nature has occurred or is occurring or is going to occur, the Bench may treat such letter or report as an application within the meaning of article 102 of the Constitution and may issue Rule Nisi upon such person(s) and/ or public authority and in such terms as the Bench considers appropriate.

(2) Where the Motion Bench issues a Rule Nisi under sub-rule (1), the Bench shall, for verifying the authenticity of the letter/report, simultaneously-

- (a) direct the office to send a notice to the sender of the letter or, as the case may be, to the maker of the report and also to the editor of the newspaper or the controlling person(s) of the media in which the report was published, and

(b) specify the date on which the matter is to be placed before the Court.

(3) In such a case, the provisions of these Rules relating to payment of Court fees on the application referred to in sub-rule (1) and swearing in an affidavit and putting in requisites for service of notice of such application shall not be applicable and the following procedure shall be applicable.

(4) After a *Rule Nisi* is issued under sub-rule-(1) the concerned Section shall register the letter/report as a Writ Petition (*Suo moto*), and shall immediately send a notice in Form No.3 (Writ), Appendix IV to the person(s) mentioned in sub-rule (2) (a) with a request to send, on or before the date specified by the Court, a verification in Form No. 4(Writ), Appendix IV, along with a copy of the Court's order.

(5) For service of notice of the *Rule Nisi* the office shall immediately send to the person(s) and public authority upon whom the *Rule Nisi* is issued, the notice(s) along with a copy of the letter/report and the Court's order. Service of notice shall be effected in normal course and by registered post with acknowledgement due receipt.

(6) Irrespective of receipt of a reply to the notice issued under sub-rule (5), the concerned Section shall, on the date specified in the order, place the matter before the Bench which passed the order or, if that Bench is not functioning for any reason, before an appropriate Bench dealing with Writ matters.

(7) The other provisions of these Rules shall apply to a proceeding under this rule *mutatis mutandis*.

11. Notice to be served on all the parties.-(1) Subject to the directions of the Court, notice of every application/petition shall be served on all parties upon whom *Rule Nisi* has been issued. For this purpose the petitioner shall file as many authenticated copies of the application/petition and affidavits and other documents required to be filed under rule 5(a) above, as there are parties to be served and shall also put in the requisites prescribed by rule 19 below.

(2) At the hearing of the application/petition, any person who desires to be heard in opposition to the petition and appears to the Court to be a proper person to be heard, shall be heard notwithstanding that he has not been served with a notice and subject to such conditions as to costs as the Court may deem fit to impose.

12. Court's direction to serve notice on other persons.- If at the hearing of the application/petition the Court is of opinion that any person ought to have been served with notice of the application/petition, but has not been so served, the Court may direct that notice may also be served on such person and adjourn the hearing upon such terms as the Court may consider proper.

13. Notice to a Court etc.-Where the application/petition relates to any proceeding in or before a Court and the object is-

(a) to compel the Court or an officer thereof to do any act in relation to such proceeding, or

(b) to declare the proceeding or any order made therein as nullity.

notice thereof shall also be served on such Court or officer as well as the other parties to such proceeding and where any objection is taken with respect to the conduct of a Judge, also on the Judge.

14. Respondent's affidavit in opposition.-(1) If the Respondent (s) intends to controvert any statement(s) made in the petition and/or any document(s) annexed thereto, he can do so by filing an Affidavit-in-opposition.

(2) In preparing the affidavit in opposition, the Form No.5 (Writ), Appendix IV shall be followed.

15. Supplementary affidavit of a party.- (1) If any of the parties, whether petitioner or respondent, intends to make statement in addition to the original writ petition or to the original affidavit in opposition, such party may make his additional statement by making the same in a supplementary affidavit.

(2) In preparing the supplementary affidavit the Form No.6(Writ), Appendix IV shall be followed.

16. Placement of Rule before Court for hearing.-

Where the Court has issued a Rule *Nisi* on the Respondent(s), the Rule shall, on the date fixed for its return, be placed for hearing before the appropriate Bench even if it is not ready for hearing.

17. Affidavit as evidence and other evidence.-

All disputes involved for determination by such application /petition shall be decided ordinarily upon affidavits, but the Court may direct that any question, as it may consider necessary, be decided on such other evidence and in such manner as it may deem fit and proper and in that case it may follow such procedure and make such orders as may appear to it to be just.

18. Difference in opinion of Division Bench.-

When the Judges of a Division Bench are equally divided in taking decision on a matter, it shall be referred to the Chief Justice by the Judges so divided and the Chief Justice shall appoint one or more of the other Judges and the said other Judge or Judges so appointed shall record his or their decision on the matter after giving the parties an opportunity of being heard. The decision of the majority of all the Judges, including those who first heard the matter, shall be the decision on the matter.

19. Chargeable court-fees and other fees.-

(1) Every application/ petition for a direction, order or declaration, other than a direction in the nature of Habeas Corpus, shall be chargeable with a court-fee of Tk.50/- and each annexure to such application/petition shall be chargeable with a court-fee of Tk.5/-.

(2) Every affidavit sworn in or affirmed before a Commissioner of this Court shall bear a Court-fee of Tk.5/-.

(3) For every notice, direction or order to be served within five miles of the Court's premises, there shall be deposited in the Court's Office, before such service, Tk.5/- for each person to be served, provided that where a number of persons are to be served at the same address the fee shall not exceed Tk.15/- in all, plus actual conveyance cost for the cheapest conveyance available in keeping with the grade of the employee effecting service.

(4) The fees chargeable for certified copies of documents shall be those laid down in Chapter XIII of these Rules.

(5) All other documents shall be chargeable with the same court-fee as would be charged thereon if they were presented or filed on the Appellate Side of the Court.

20. Costs.-Where costs are awarded to a party, such costs, unless otherwise directed by the Court, shall include the court-fees paid on the petition and other documents under these Rules, the costs of making copies of petition, affidavit etc., which are furnished to the Court and which by these Rules are required to be served on the respondent(s), the cost of service of notices, directions, orders or writs as prescribed by rule 19 above and the Advocate's fee.

21. Application for direction in the nature of Habeas Corpus.- Applications for the issue of direction under article 102(2) (b) (i) shall be governed by the rules relating to applications under section 491 of the Code of Criminal Procedure in Chapter XI of these Rules with suitable modifications where necessary.

22. Application of Chapter IV & IVA.- Subject to the provisions of this Chapter the rules contained in Chapter IV and IVA shall apply *mutatis mutandis* to an application/petition and an affidavit in opposition and supplementary affidavit made under this Chapter and also to service of notice of a Rule Nisi issued or other order passed in a proceeding under the Chapter.

23. Advance order.-If the Court in a proceeding under this Chapter, directs an order to be issued immediately, the Bench Officer shall at once draw up the order in Form No.7, Appendix IV, and after obtaining the signature of the Judge(s) in the Form, send it forthwith to the concerned Deputy Registrar for issuance of the order, without waiting for the full text of the order or the Judgment to be signed. The Deputy Registrar, shall under his signature, issue copy(ies) of the order upon payment of Tk.50/- by the applicant/petitioner.

Provided that if it is not possible to obtain the signature(s) of the Judge(s) on the day on which the order is passed, on the form as aforesaid, the matter should be brought immediately to the notice of the Registrar. If one Judge of the Bench has signed the order, the substance of it shall be communicated to the concerned Respondent/Person/authority or to the Subordinate Court immediately, with a note that the copy of the proper order will follow.]

¹[CHAPTER- XIB**REFERENCE****A - Reference under section 52 of the SA & T Act, 1950
(XXVIII of 1951)**

1. Presentation of reference to Registrar.-A reference made under section 52 (1) and an application under section 52(2) of the State Acquisition and Tenancy Act, 1950 shall be presented to the Registrar.

2. Contents of reference.- A reference under rule 1 shall contain a statement of the case drawn up by the Special Judge in the form of consecutively numbered paragraphs, setting out all the relevant facts and proceedings in chronological order and the question or questions of law on which the decision of the High Court Division is sought. The reference shall be accompanied by the connected records of the case pending before the Special Judge.

3. Party to prepare Paper-book.- Paper-books in respect of such a reference shall be prepared by the party at whose instance the reference has been made.

4. Special Judge to give notice of reference.-The Special Judge, when making a reference to the Court, shall forthwith give notice thereof to the party at whose instance the reference has been made and inform him to take necessary steps for the preparation and filing of the paper-book in accordance with the provisions of this Chapter. The Special Judge shall, together with the notice, send a copy of the statement of the case.

¹ Chapter XIB was inserted by Notification No. 181-G dt. 22-10-2012.

N.B. This Chapter contains more or less rules similar to the rules as contained in Appendix-IV before amendment by Notification *ibid*.

5. Numbers of Paper-books and distribution.-(1) Unless the Court otherwise directs, the paper-books shall be printed and six copies thereof shall be filed in the Court within two months, or within the next 30 days if allowed by the Registrar, after presentation of the reference.

(2) Four copies of the paper-book shall be supplied to the opposite party free of charge by the party responsible for the preparation of the paper-book. Further copies shall be supplied only upon payment of their proportionate cost and only if further copies are available.

(3) If paper-books are not filed within the time specified in sub-rule (1), the matter shall be laid before the concerned Bench for order.

6. Provision relating to Paper-books in First Appeals applicable.-Unless otherwise ordered, the paper-book shall, as far as possible, as regards form, size, typography and arrangement thereof, be prepared and printed in accordance with the directions contained in these Rules for the printing of paper-books in First Appeals.

7. Contents of Paper-books.-The paper-book shall contain the following:

- (a) the statement of the case;
- (b) the decision of the Special Judge under section 51 of the said Act;
- (c) the order of the Superior Revenue Authority under section 41 and/or the order of the Commissioner or other officer under section 49;
- (d) in a case commencing with a reference under section 60, the reference made by the Revenue Officer;
- (e) the application for reference under sub-section (1) of section 52;
- (f) the other party's reply thereto before the Special Judge, if any;

- (g) in the case of a reference made in pursuance of a direction under sub-section (2) of section 52, the decision made under the said sub-section and the judgment delivered, if any; and
- (h) such other documents on which the party preparing the paper-book seeks to rely and which may be necessary for understanding the point or points of law referred to.

8. Registrar to place Paper-books before Court.- Upon the paper-books being filed, the Registrar shall lay the matter before the concerned Bench for the purpose of fixing a date for hearing.

9. Notice of hearing.- Notice of the date fixed for the hearing shall be given by the Registrar to the parties to the reference or to their respective Advocates if the parties are represented by Advocates.

10. Application under section 52(2) of Act XXVIII of 1951 and necessary documents.- Every Application made under section 52(2) of Act No. XXVIII of 1951 should be titled "In the matter of The State Acquisition and Tenancy Act, 1950 (No. XXVIII of 1951)" and should be in the form of a petition divided into consecutively numbered paragraphs, setting out in chronological order all relevant facts and proceedings and should be supported by an affidavit of the applicant or some other person acquainted with the facts and should also be accompanied by a copy of the application made to the Special Judge, copies of the relevant orders and such other documents as may be necessary for understanding the point or points of law on which adjudication is desired or on which the applicant seeks to rely.

11. Placement of application before Court.- On presentation of such an application, the Registrar shall lay the same before the concerned Bench for the purpose of fixing a date for the hearing thereof.

12. Service of notice of Rule.-Whenever a Rule is issued by the High Court Division on such an application, the Rule, together with a copy of the petition and affidavit in respect of such an application shall be served upon the opposite party by the party obtaining the Rule, who shall file an affidavit of service immediately after such service.

13. Counter affidavit by opposite party.-The opposite party shall be at liberty to show cause by filing a counter affidavit.

14. Advocate to receive notice for client.- The advocate presenting an application under the said section 52(2) shall be bound to accept service on behalf of his client of any notice issued by the Court until the case has been finally disposed of or a change of advocate has been effected in the manner prescribed by the Rules of the Court.

15. Calling for record.- The Court may call for record of the Special Judge, if necessary.

B - Reference under section 160 of the Income Tax Ordinance, 1984 (XXXVI of 1984)

16. Reference to be presented to Registrar.- A reference under section 160 of the Income Tax Ordinance, 1984, herein after referred to as the said Ordinance in this Part-B, shall be presented to the Registrar by application.

17. Documents to be attached.- An application under rule 16 shall, in addition to the documents mentioned in section 160 (1) of the said Ordinance, be accompanied by the following:

- (a) such number of copies of the application, as there are respondent(s), for service;

(b) process fee as specified in rule 1 of Chapter XII.

18. Form of Notice.-The notice under rule 17 shall be issued in the following Form:

NOTICE

(Rule-18, Chapter-XIB, HCD Rules)

**SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION**

Reference Petition No-----

-----& others

-----Petitioner(s)

Vs.

Commissioner of Taxes-----

-----Respondent.

To

Commissioner of Taxes

Take notice that the reference petition under section 160 of the Income Tax Ordinance, 1984 has been filed in this Court on ----- and it has been set down for hearing on-----

Copy of the application is enclosed herewith. You yourself or your Advocate or your authorized agent has to submit written statement in respect of the question raised or any other matter in the Registrar's Office 7 days ahead of the said date fixed for hearing.

By Order of the Court.

Superintendent/Assistant Registrar

Enclose: Reference Petition- 1 Copy.

19. Registrar to send notice of hearing.- Notice of the date fixed for hearing shall be given by the Registrar to the Commissioner or to the concerned Advocate, or to the Assessee if the application is presented by the Assessee in person, as the case may be. The Registrar shall also cause such notice to be served on all other parties to the reference.

20. Cost.-Costs in a reference under the Income Tax Ordinance, 1984 are within the discretion of the Court, and will be paid by such party or parties as the Court may order. Unless otherwise ordered, costs of and incidental to a reference will be taxed in the same manner as in an appeal from a decree on the Appellate Side of the Court. The fee of Tk.2000/- paid by the Assessee under the sub-section (1) of section 160 of the said Ordinance shall, however, in all cases be adjusted against the costs or added thereto in the event of costs being awarded to the Assessee.

C-Reference under the Stamp Act, 1899

21. Reference to be presented to Registrar.-All statements of the case or/references under section 57 to 60 of the Stamp Act, 1899, shall be presented to the Registrar.

22. Contents of reference.- The statement of the case shall be in the form of numbered paragraphs, setting out all the relevant facts and proceedings in chronological order and then the question of law arising therefrom.

23. Preparation of Paper-books.- Paper-books in respect of each reference made by the Chief Controlling Revenue Authority (hereinafter in these Rules referred to as the Authority) shall be prepared by or on behalf of the Authority. Six copies of the paper-book shall be filed within one month (or within the next 30 days as the Registrar may allow) after the presentation of the reference. The paper-book shall be prepared in legible writing, either printed by electronic device or in type written form or in photocopy.

24. Office to prepare Paper-book when reference from a Court.- In case of a reference made by a court, such paper-books shall be prepared by the office of the High Court Division

25. Registrar to place reference before Chief Justice.- After the paper-books are filed, the Registrar shall lay the matter before the Chief Justice who will constitute a Bench consisting of not less than three Judges, under section 57(2) of the said Act to hear the reference.

26. Notice of hearing.- Notice of the day fixed for hearing by the Bench so constituted shall be given by the Registrar to the Chief Controlling Revenue Authority or to the Advocate, acting for him, and the Attorney-General as the case may be, and to such other person or persons as the said Bench may direct.

27. Cost.- The provisions of the rules made under the Income Tax Ordinance, 1984 shall apply as far as possible to costs and all other matters in proceedings in this Court under sections 57 to 60 of the Stamp Act, 1899.]