



# **JHARKHAND**

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**Judicial Services Exam**

**CIVIL JUDGE CADRE**

**High Court of Jharkhand**

**Law**

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**Volume - 1**



# JHARKHAND JUDICIARY SERVICES

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# *The Code of Civil Procedure*

## Order XIX: Affidavits

**Rule 1:** Wherever court is satisfied that there is reasonable ground then fact can be proved on affidavit. It shall be heard at hearing.

\* There can be cross examination.

**Rule 2:** The person giving affidavit is called deponent.

**Rule 3:** In affidavit all things must be proved which is in knowledge except the interlocutory injunction which is in belief.

\* Wherever matter is hearsay, unnecessary, irrelevant or argumentative or copies of or extract from document then it shall not be on affidavit.

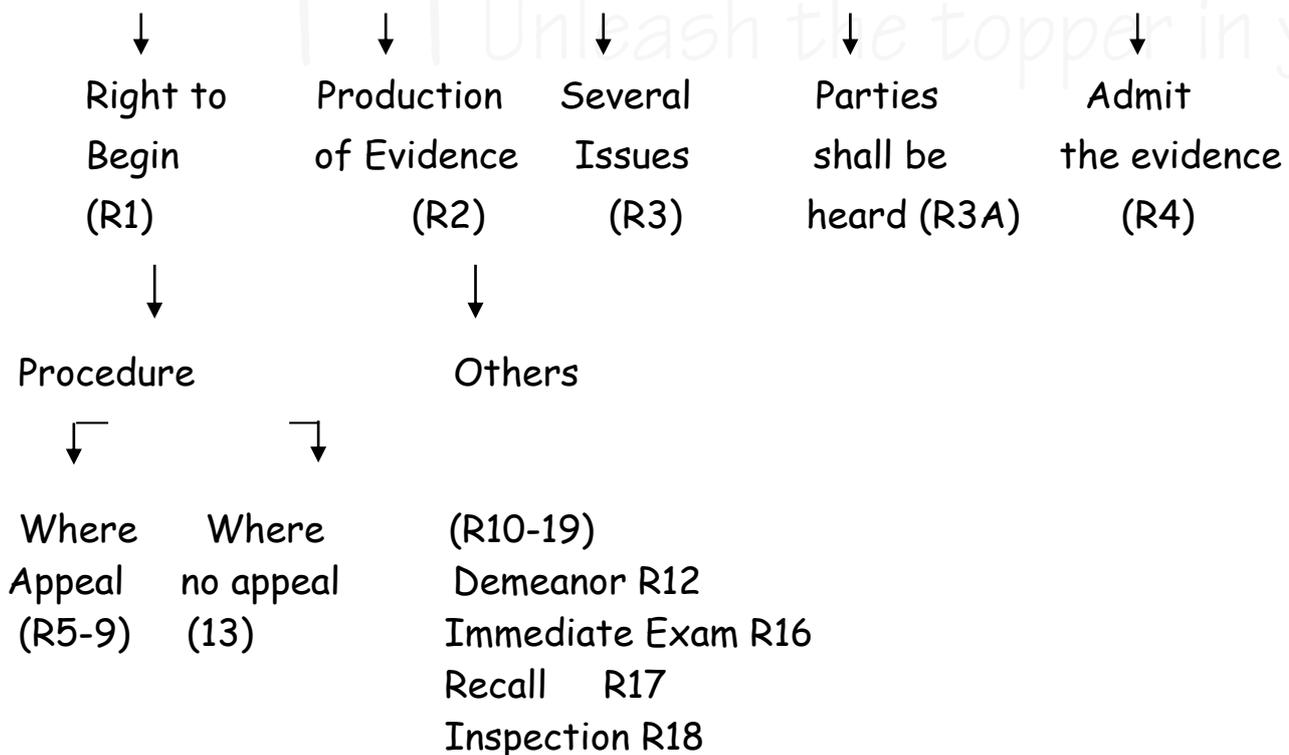
**Sec 139:** Oath on affidavit can be taken in front of;

- a. Court or Magistrate
- b. Notary Public
- c. Person/Officer authorized by HC or SG.

\* Vir Bhadra Vs Takchand

\* Oath when taken in front of magistrate or court then it is called affidavit which is admissible in evidence.

Order XVIII: Hearing of the Suit and Examination of the Witnesses



**Q.** Whose has the right to begin?

**Ans. R 1:** Plaintiff shall have right to begin except when the defendant accept the fact and argues only on question of law. In such circumstance defendant can also begin.

**R 2:** Both parties shall be heard in hearing.

\* After oral argument there can be written argument.

**R 3:** Wherever there are several issues then burden of proving of some issues on one party and burden of proving some facts on another party.

\* All issues can be heard together

**R 3A:** Parties shall be heard at 1<sup>st</sup>. [before witness]

**R 4:** Wherever examination in chief it can be on affidavit.

\* There can be CE & RE.

\* Commission may be issued 60 days time shall be given to make record.

**Rule 13:** Where there is no appeal

\* Wherever there is no appeal then a memorandum shall be made.

\* Where there is appeal [R 5-9]

**Rule 5:** Record shall be made in language of court. If required then by magistrate himself, in his direction or suspension in short hand or type writer.

**Rule 6:** If in other language then assistance of translator shall be taken.

**Rule 7:** In following circumstances, there shall be record in English;

\* When HC has given direction. [138 CrPC]

**Sec 138:** HC can issue notification in official gazette that evidence be recorded in English.

**Rule 9:** Wherever following circumstances then also evidence in English;

a. Language of court not English but all parties give evidence in English.

b. Language of court not English but judge gives record in English & parties don't object.

**Rule 8:** Wherever judge himself is not acting then shall assign reasons.

**Rule 10:** Court can write any answer or question or any objection to any question.

**Rule 11:** If any person has object then his name & objection shall be written.

**Rule 12:** There can be comment on demeanor.

**Rule 15:** If evidence is taken by any judge and he has died or transferred then such evidence can be used [Refer Sec 326 CrPC]

**Rule 16:** Wherever witness is going out of jurisdiction or other reasonable ground.

\* Then immediate examination shall be taken.

**Rule 17:** There can be recalling of witness & re-examination.

**Rule 18:** Judge at any time can inspect any place. [Refer 310 CPC]

**Rule 19:** Commissions can also be there.

**Sec 153 B:** Court shall be considered open for public in general until person can be contained.

If court deem fit at any stage can ask any particular or person to go out. [Refer 327 CrPC]

**Sec 33:** After hearing the matter court shall give judgment and according to judgment, decree shall follow.

### Order XX : Judgment and Decree

Judgment	Decree	Others
R 1-5	R 6-8	R 9-20  R 9 = Immoveable Property  R 10 = Moveable Property  R 11 = Installments  R 12 = Mesne Profit  R 12 A = Specific Performance of contract  R 13 = Administration suit  R 14 = Preemption  R 15 = dissolution of Partnership  R 16 = Principal & Agent  R 18 = Partition  R 19 = Set off & Counter Claim  R 20 = Certified copy  R 17 = Accounts

\* R 13, 15, 16, 18 = Preliminary Decree & Final Decree

**Q. What do you understand by Judgment?**

**Ans. rule 1:** Judgment shall be given in open court either immediately or date shall be fixed.

- As far as possible within 30 days.
- If reason then in 60 days.

**Rule 2:** No need to pronounce the whole judgment. If any judge has given judgment but not delivered it then successor can read out.

**Rule 3:** Once judgment is signed then no amendment. Except

- a. Arithmetical or Clerical Error.
- b. There can be review.

**Rule 4:** Judgment is of following types;

<b>General Court</b>	<b>Small Course court</b>
<ul style="list-style-type: none"> <li>* Concise statement of case</li> <li>* Points of determination</li> <li>* Decision &amp; its Reason</li> </ul>	<ul style="list-style-type: none"> <li>* Points or determination</li> <li>* Decision</li> </ul>

**Rule 5:** Judgment shall be given on all issues. Except court otherwise deem fit.

**Rule 5A:** Wherever there is no pleader of a party then court shall give information that where appeal shall lie and in how many days.

**Q. What is Decree? [Sec 2(2) + O XX]**

**Ans. Rule 6:** Decree shall be according to the judgment and has following things;

- a. Case no.
- b. Name & Address of Parties.
- c. Relief
- d. Cost
- e. Set off & Counter Claim

**Rule 6 A:** It shall be made within 15 days of judgment.

- \* Wherever there is appeal then copy of judgment shall be kept and as soon as decree is passed judgment will be replaced with decree.

**Rule 6 B:** The copy of judgment is given immediately so that there can be appeal in higher courts.

**Rule 7:** In decree also date of judgment & sign of judge.

**Rule 8:** If post of judge is vacated before giving decree then successor can give decree.

**Q.** What are the various types of Decrees?

**Ans.** Rule 9: Wherever decree of immovable property then such property shall be identified in which account no., boundaries, survey number, settlement, etc.

**Rule 10:** Wherever moveable property

- a. Property shall be delivered.
- b. Money can be alternative relief.

**Rule 11:** Wherever money is to be paid then it can be installments.

**Rule 12:** Wherever matter of possession of property there

- a. Possession of property
- b. Rent
- c. Mesne Profit

**Rule 12 A:** Wherever matter is of specific performance of contract,

\* Then asked to deposit the money.

**Rule 13:** Wherever there is administrative suit.

- a. Preliminary Decree = Inquiry of accounts.
- b. Final Decree = Distribution

**Rule 14:** Wherever matter is of Pre-emption few people shall be given preference

- \* On the due date person has to deposit due amount who wants to purchase.
- \* If any expenditure that shall be deposited.
- \* If two person claims then;

- a. The person whose degree is less than profit shall be delivered to him.
  - [The relative who is near]
- b. If the degree of both relatives is same then both shall take equally.

**Rule 15:** Wherever dissolution of partnership

- a. Preliminary decree = Proportional share
- b. Final decree = Distribution of share.

**Rule 16:** Wherever matter of principal or agent.

- a. Preliminary decree = Accounts
- Final decree = for amount due

**Rule 17:** Court if require for accounts give special directions.

**Rule 18:** Partition of Property which gives revenue to state

<b>Collector shall due partition</b> <b>[Refer Land Revenue Act.]</b>	<b>Preliminary decree =</b> <b>determination of rights</b>
	<b>Final Decree = Partition</b>

**Rule 19:** Wherever matter of set off or counter claim then separate decree or specifically written in that decree that how much amount is due.

**Rule 20:** Certified copy shall be given. Parties shall apply & give cost.

### Interest

Before suit	During Suit	Till payment of money	
As per agreement [10%]	[From Institution till Judgment]  [As court deems fit ]  * It is the discretion of court.	<ul style="list-style-type: none"> <li>- 6% per annum</li> <li>- Wherever commercial matter it can be more than 6%.</li> </ul>	
		If there is any agreement then interest according to contract.	If there is no agreement then that interest state which nationalized bank which shall give in Loan.

- \* It is the discretion of court to give interest.
- \* If no relief is given then it shall be considered refused.

Q. What do you understand by cost?

Answer.

S 35	O 20 A	S. 35 A	S. 35 B
Ordinary Cost	Miscellaneous Cost	Compensatory Cost	Cost for delay

**Sec 35:** It is the discretion of court that considering the circumstances he can take cost from any party in any amount when payment to be done.

- a. Cost of witness
- b. Legal Fees
- c. Other cost which is incurred in proceeding.

The general rule is that cost follow the event i.e. person winning shall be given cost. Are there any exceptions to this rule? [When cost shall be given to person losing the case]

- a. When any party is implied party wrongly.
- b. Causes delay
- c. Withdrawal without permission of court.
- d. Abandon the case
- e. Unwanted litigation

**Order XX A: In cost following things are included**

- a. Notice before suit
- b. Where no need to give notice, there notice was given
- c. Cost of typing printing etc
- d. Inspection of documents
- e. Production of witness
- f. Where appeal then cost for copy of judgment.

**Sec 35 A:** Wherever court is satisfied that suit is frivolous or vexatious then plaintiff shall give following cost.

- a. Till Rs 3000
- b. Pecuniary Jurisdiction of Court

Whichever is less?

- \* Wherever small court then Rs 250.
- \* If HC requires Rs 100 can be more authorised. [250 + 100 = 350]

**Sec 35 B:** Wherever party causes delay then court shall recorded reasons and gives order of reasonable amount.

- \* It shall be condition precedent for further proceeding.
- \* If amount not paid then separate can be made or there can be mention in the same decree.

### Order XXII: Death Marriage and Insolvency of Parties

Death	Marriage	Insolvency	Others
1 - 6	7	8	10
9		9	11
			12

**Q.** What do you understand by death of Parties? [R 1-6, 9]

**Ans. Rule 1:** Wherever death of any party if right to sue remains then suit shall not be aborted.

- \* In various circumstances by death right to sue abates.

**Rule 2:** Wherever more than one plaintiff or defendant and one of them expires then right to sue in remaining plaintiff or defendant.

**Rule 3:** Wherever right to sue doesn't go on remaining plaintiff or there is single plaintiff only then it shall go to LR.

- \* Refer Sec 2 (11) of CPC.
- \* Limitation period 90 days.
- \* Refer Article 120 of limitation Act
- \* Application on time else suit shall abate.

**Rule 4:** Wherever there is sole plaintiff or other defendants don't have right then LR shall be made parties.

- \* Its application is also given by plaintiff.
- \* Refer Article 120 of Limitation Act
- \* There can be application for delay.
- \* In following conditions no need of LR;
  - a. Defendant didn't give any written statement.
  - b. He has never appeared in court

Then court shall prove as if after judgment death occurred.

**Rule 4 A:** Wherever there is no LR there court shall appoint following;

- a. Administrator General
- b. Officer of Court
- c. Any other person

Before appointment following things shall be seen;

- a. There is no adverse interest.
- b. Such person should give consent.

**Rule 5:** Wherever any questions relate to LR then court shall decide.

**Rule 6:** After hearing if any party expires then judgment shall be given as if it is after death.

**Rule 7:** Wherever any woman is marriage then suit shall not abate, judgment and execution shall be against her.

- \* Husband not liable except law. [Guarantee]

**Rule 8:** Wherever any person has become insolvent then suit shall not abate if assignee/receiver gives security

- \* If no security is given then suit shall abate.

**Rule 9:** Wherever suit has abetted or dismissed then no fresh suit, Res Judicata applies.

- \* Remedy = There can be application. If application dismissed then appeal in O 43 R1 (K).

**Rule 10:** Wherever any person has obtained interest than he can sue with permission of court.

**Rule 10 A:** Duty of adv. to inform court regarding death of party.

**Rule 11:** This order applies to appeals also if appeal then

Suit = appeal

Plaintiff = appellant

Defendant = respondent

**Rule 12:** R 3, 4 & 8 not apply to execution.

**Order XXV: Security for cost**

**Rule 1:** Court Suo Moto or on application can ask the plaintiff to give security for cost.

**Rule 2:** Wherever there is sole plaintiff or all plaintiff reside out of India and no property other than disputed property then court can ask security.

- \* If not security given then suit shall be dismissed.
- \* Remedy; There can be application
- \* If application dismissed then appeal in O 43 R 1 (N)

**Order XXIV: Payment into Court [Learn the illustrations also]**

**Rule 1:** Wherever matter of debt or damages then defendant at any stage can deposit in court and it shall be full satisfaction from his side.

**Rule 2:** When money deposited in court then information shall be given to other party.

**Rule 3:** After giving notice no interest shall be paid.

**Rule 4:** Wherever payment is made but party considers only of part then for remaining suit can continue and later on if court is satisfied that full satisfaction was there then cost shall be recovered.

- \* Wherever there is full satisfaction then statement in this regard and court shall give judgment.
- \* Cost shall be recovered from person who is most to be blame for suit.

## Order XXIII: Withdrawal and Adjustment of Suits

Rule 1 (1)  Abandon	R 1 (A)  Transposition	R 2	Compromise  R 3  R 3 (A)  R 3 (B)
Rule 1 (3)  Withdraw			

**Rule 4:** The above rule also applies to the execution.

Q. What do you understand by abandonment?

Ans. **Rule 1 (1):** Wherever any matter is instituted and later on plaintiff is satisfied then he can abandon any part or the whole suit

- \* Wherever matter is of O 32 then with permission of court minor or unsound mind can be removed for this next friend or pleader shall give certificates.
- \* There can't be fresh suit, Res Judicata apply.

Q. What do you understand by withdrawal?

**Rule 1 (3):** Wherever court is satisfied,

- a. There is any defect
  - b. New can be instituted.
- \* Then with permission of court there can be withdrawal.
  - \* Wherever withdrawal then liberty can also be asked. [Liberty = Extension in period of limitation]
  - \* If with permission of court then no Res Judicata, if without permission then Res Judicata shall apply.

**Rule 2:** Wherever new suit then it shall be considered that there is no old case.

**Rule 1 A:** Wherever plaintiff has withdrawn or abandoned the suit then defendant apply to court that he be kept in place of plaintiff and suit be proceeded. This is called transposition.

E.g.: X Vs A, B, C  
 X A Vs B, C

**Q.** What do you understand by compromise?

**Ans. Rule 3:** Wherever court is satisfied that agreement is valid, written, signed then such agreement can be placed by court on record and give judgment.

- If agreement is void or voidable then it shall be not considered.

**Rule 3 A:** Wherever decree by compromise then it shall not be set aside

**Sec 96 (3):** there shall be no appeal.

- Remedy: O 43 R 1 (A), there can be appeal whether it was recorded correctly or not.

**Rule 3 B:** Wherever there is a representative suit, then compromise only with permission of court. Without permission then void.

Following is considered as representative suit;

- a. Sec 91, 92
- b. O1 R8
- c. Karta in HUF
- d. Any person in any other law

E.g.: Trade Union Act

**Q.** What do you understand by Commission? [Sec 75-78] +) O26

**Ans. Sec 75**

E	L	A	P	S	S	M
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E = Examination of Person

L = Local Investigation

A = Accounts

P = Partition

S = Scientific

S = Sale

M = Ministerial Act [Very small things]

**Sec 76:** Wherever examination of person in another state then commission shall be sent in that place where person resides.

- Commission shall be issued to that court where he issued to that court where he issued to that court where he resides, he shall examine the person and send it back to the court who issued it.

**Sec 77:** Wherever commission is to be issued to a foreign country then a letter of request shall be issued.

**Sec 78:** Wherever commission is received by any court then he shall act as if it is issued by itself.

Commission can be received from following court;

- a. Court in India where CPC not apply.
- b. Court outside India but established by authority of India.
- c. Any court outside India.

**Order XXVI : Commission**

Examination 1-8	Local Investigation 9-A	Scientific 10 A	Ministerial 10B
Sale 10C	Accounts 11-12	Partition 13-14	General rules 15-18B
Foreign Commission 19-22			

Q. What do you understand by Examination of parties? [R 1 - 8]

Ans.

<b>Within Jurisdiction</b>	<b>Outside Jurisdiction</b>
Rule 1: Wherever person resides within jurisdiction of court then the general rule is that no commission will be issued.	Rule 4 : Wherever person is out of jurisdiction the commission shall be issued, similarly, if a person is going out of jurisdiction
Except : Exceptional situations a. Person exempted in CPC. [President] b. Sick c. Infirm d. In the opinion of court necessary for justice.	b. is in service of govt. c. Or public interest is infected ○ Then commission can be issued.
	Rule 5: If person is out of India then request from foreign country.

**Rule 2:** Court can give such order suo moto or on application.

**Rule 6/7:** Wherever statement of person is to be taken if any person has any objection then generally such statement shall not be taken except.

- a. Person is out of jurisdiction
- b. Person has expired
- c. Infirm/sick
- d. Exempted by court
- e. Discretion of court
- f. Person in service of govt. and he can't come.
  - In all these matters report shall be admissible and read in evidence.