



# THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

PUBLISHED BY THE AUTHORITY

নং 258 দিশপুৰ, বুধবাৰ, 16 ছেপ্টেম্বৰ, 2015, 25 ভাদ, 1937 (শক)

No. 258 Dispur, Wednesday, 16th September, 2015, 25th Bhadra, 1937 (S.E.)

GOVERNMENT OF ASSAM  
ORDERS BY THE GOVERNOR  
THE GAUHATI HIGH COURT AT GUWAHATI

## NOTIFICATION

The 27th August, 2015

## **The Gauhati High Court Civil Courts Commissioners Rules, 2015**

### PREAMBLE

No. HC.XI-09/2015/200/RC.- Whereas a maximum time is consumed in recording oral evidence of witnesses whose examination-in-chief on affidavit are submitted by parties in a civil proceeding, a civil court finds little time in framing issues, hearing arguments, writing orders and judgments in suits and proceeding, thereby causing delay in disposal of cases.

Whereas to expedite the disposal of civil suits, these rules are framed for Commissioners to be appointed as per provision of O-XVIII R-4 of Code of Civil Procedure.

Whereas in exercise of power vested in the High Court under Section 122 of Code of Civil Procedure, the Gauhati High Court framed these rules to regulate the functioning of Commissioners appointed for recording evidence in civil suits and proceedings.

**Short title and commencement:**

1. i) These Rules may be called "Gauhati High Court Civil Courts Commissioners Rules", 2015.  
ii) These Rules shall come into force forthwith.

**2. Definitions:**

In these Rules unless the context otherwise requires;

- (i) "High Court" shall mean the Gauhati High Court.
- (ii) "Committee" shall mean the committee constituted under section 123 of Code of Civil Procedure, 1908.
- (iii) "Chief Justice" shall mean the Chief Justice of Gauhati High Court.
- (iv) "District Judge" shall mean the Judge of a Principal Civil Court of original jurisdiction.
- (v) "Civil Court" shall include courts of District Judge, Additional District Judge, Civil Judge and Munsif.
- (vi) "Code" shall mean Code of Civil Procedure, 1908.
- (vii) "Selection Committee" shall mean a committee constituted for the selection of Commissioners as per provisions of O-XVIII R-4 CPC.
- (viii) "District" shall mean a Judicial District.
- (ix) "Government" shall mean the Government of Assam.

**3. Application:**

These Rules shall apply to all the Civil courts, Commissioners and Advocates appearing in civil suits and proceedings.

**4. Persons Eligible for Selection as Commissioner:**

- (i) No person shall be selected as Commissioner unless he is a practising advocate in the concerned district.
- (ii) No person shall be selected as Commissioner unless he has completed five years practice in the Bar and is a practising advocate on the day of giving option for empanelment as commissioner.
- (iii) A willing Advocate shall give a declaration that no criminal or civil cases are pending in any court and no disciplinary proceeding is pending in the Bar Council against him.

**5. Constitution of Selection Committee:**

The Concerned District Judge shall constitute a selection committee consisting of the following persons:

(i) The District Judge- Chairperson.

(ii) Senior most Civil Judge of the district- Member.

(iii) President of the Bar Association- Member.

**6. Procedure for Selection of Commissioners:**

i) The concerned District Judge shall initiate the process of selection of Advocate Commissioner of his district.

ii) The District Judge shall publish a notice inviting options from the eligible Advocates. The notice shall be affixed in the notice board of the office and shall be uploaded in the official website of the district. A copy of the notice shall be forwarded to the President of the local Bar association.

iii) The District Judge shall prepare a list of the eligible advocates, who opted to become Commissioner and publish the same in the notice board of the office and the official website of the district.

iv) The selection Committee constituted for the purpose shall fix a date for conducting *Viva-Voce* for preparing a list of eligible advocates. The date of *Viva-voce* shall not exceed fifteen days from the publication of the list.

v) The selection Committee shall test the knowledge of the advocate on relevant provisions of the Code, Gauhati High Court Civil Rules and Order, relevant provisions of the Indian Evidence Act, and General Aptitude.

vi) The selection committee shall prepare a select list in order of merit and performance in *Viva-Voce* and prepare a panel of the commissioners which shall be valid for a period of three years. The concerned District Judge out of the panel shall attach suitable numbers of commissioners for each Civil Court.

vii) The District Judge may take such action, as he deems fit, including striking out the name of any commissioner from the panel for misconduct or for any other reason, rendering such commissioner not suitable to function as such.

**7. Appointment of Commissioner:**

The concerned Civil Court shall appoint Commissioner from the panel prepared as per Rule-6(vi).

**8. Role and Duties of Referral Court:**

- i) A Civil Court before referring a suit or case to a commissioner for recording evidence shall apply his mind as to whether the case is fit to be referred to Commissioner taking into consideration the facts of the case, nature of the allegations, nature of the evidence and importance of the witness.
- ii) A Civil court shall exercise his discretion with circumspection to refer a case to commissioner in cases where complex question of title is involved, suits relating to partnership business, suits involving serious allegations of fraud, forgery, serious disputes relating to execution of will, etc.
- iii) A Civil court while referring cases to Commissioners may give preference to old pending cases.
- iv) A Civil Court shall not refer a case to commissioner without following the mandatory stages of a civil litigation, like framing of issues, steps before peremptory hearing, production of documents, compliance of Section- 89 of the Code, etc.
- v) A Civil court shall pass a specific judicial order while referring a case to Commissioner and one month time shall be given to a Commissioner to record cross-examination, re-examination, if any of the witnesses of each party and for submission of report.
- vi) A Civil court while referring a case to Commissioner may furnish copies of plaint, written statement and issues, so that a Commissioner understands the nature of the case and evidence which is required to be adduced.
- vii) A Civil Court shall pass the referral order in presence of the counsel of the parties and their signatures shall be obtained in the order sheet. The Court shall make endeavour to obtain the mobile numbers of the counsel of both parties and may furnish the same to the commissioner.
- viii) Ordinarily a Civil Court shall record the evidence of official witnesses.
- ix) A Civil Court shall furnish the attested photocopies of the documents produced by the parties to the commissioner along with the case

records, retaining the originals with the court and with the consent of the parties the photocopies can be marked as exhibits. If the case requires the original document for the purpose of cross-examination the court shall depute one staff to carry the original document/record to the Commissioner for the purpose of recording evidence. The commissioner shall submit the report along with the documents marked as exhibits. Thereafter, the Court shall sign the document.

#### **9. Role and Duties of Commissioners:**

- i) All Commissioners appointed under these rules shall maintain a diary indicating the number of the case, the court from which it is referred and the date in which the report is required to be submitted.
- ii) A Commissioner on receipt of a referral order shall fix a convenient date, time and place in writing for recording the evidence in consultation with the counsel and obtain their signatures.
- iii) Ordinarily all evidence shall be recorded during office hours.
- iv) A Commissioner may explore the possibilities for resolution of the dispute amicably.
- v) The parties to suit or a case shall produce their witnesses before the Commissioner and no fresh summons shall be issued in this regard. The court may also ensure the attendance of the witnesses, who have filled their affidavit of examination-in-chief and refer them to commissioner for cross examination.
- vi) A Commissioner shall administer oath to witness as per the provisions of the Oaths Act, 1969 or any other law or rules in this regard.
- vii) A Commissioner shall record the evidence of the witness either in English or in the official/court language.
- viii) A Commissioner after recording the evidence of the witness shall read over the evidence to witness and obtain his/her sign or signature and thereafter shall write R.O.A.C(Read over and admitted as correct). No space shall be left above R.O.A.C and signature of the commissioner.

- ix) A Commissioner shall ensure to obtain the signature and name of the person who may take the thumb impression of a witness, unable to sign.
- x) A Commissioner shall note that the deposition is dictated and corrected, if the deposition is typed either in a computer or in a typewriter.
- xi) A Commissioner shall at the end of the deposition take the signature of the advocates of both plaintiff and defendant, who are present at the time of recording of the evidence.
- xii) A Commissioner shall ensure that cross-examination and re-examination of the outstation witness is completed as far as possible on the same day.
- xiii) A Commissioner shall consider a request for adjournment judiciously as per the parameters of O-XVII R-1 of the Code and in no case beyond the date fixed for submission of report.
- xiv) A Commissioner shall not declare a witness hostile. If such situation arises, the Commissioner shall refer the matter to the concerned court and if the court finds such plea frivolous, it may impose heavy cost.
- xv) A Commissioner, if necessary, may record the demeanour of the witness while recording the evidence.
- xvi) A Commissioner shall refer the matter to the court, if a witness refuses to answer a question during cross-examination on the plea that the question relates to a privilege communication. However, the commissioner shall record the question.
- xvii) A Commissioner shall mark a document as exhibit tentatively. If it is objected to by the other side, the admissibility of the said document shall be decided by the court.
- xviii) A Commissioner shall not impound a document. If document is found to be deficient in payment of stamp duty, the commissioner shall bring the matter to the notice of the Court.
- xix) A Commissioner shall preserve original records safely and shall ensure that documents are not lost or manipulated. A Commissioner shall give an undertaking in this regard after their appointment.

- xx) A Commissioner shall return the original record or ~~document to the court~~ immediately on completion of recording of evidence.
- xxi) A Commissioner shall complete the commission work and shall submit report within a period of one month.

#### 10. Remuneration:

- i) A Commissioner shall be entitled to a fee of ~~Rs.300~~(Rupees three hundred) per witness. In case the cross-examination of a witness could not be completed in one day and continued beyond the day, Commissioners fee shall be Rs.200(Rupees two hundred) per day for such witness.
- ii) A commissioner shall submit his bills to the concerned District Judge through the presiding officers of the referral courts.

#### 11. Code of Conduct for the Commissioners:

- i) A Commissioner performs judicial functions by way of delegation as such he is expected to maintain high ethical standard.
- ii) A Commissioner shall record the evidence of witness impartially, diligently and in presence of the parties or their authorized counsel.
- iii) A Commissioner shall conduct himself in such a manner that the confidence and trust of the litigants are not eroded.
- iv) A Commissioner shall not comment on the merit of the case and shall avoid *ex-parte* communication with the parties.
- v) A Commissioner shall endeavour to create a court room ambience while recording evidence.
- vi) A Commissioner shall maintain the dress code as prescribed by the High Court.
- vii) A Commissioner shall try to record evidence of a witness expeditiously and shall avoid frivolous adjournments.

#### 12. Residuary Provision:

The concerned court shall decide the question, if any ambiguity relating to the rules is raised by any of the parties to the proceeding.

**13. Power to Relax:**

When the Chief Justice is satisfied that the operation of any rule causes undue hardship, he may by an order dispense with or relax the requirements of that rule to such extent and subject to such conditions as it is necessary for dealing with the case in a just and equitable manner.

**14. Repeal and Saving:**

Notwithstanding to any rules or guidelines, any evidence recorded by a Commissioner prior to coming into force of these rules shall be valid and will not vitiate any proceeding. Any existing rules which are inconsistent to these rules shall stand repealed.

Any panel of Commissioners, prepared before these rules shall be deemed to have been prepared under these rules.

**By Order,**

**H. K. SARMA,**  
Registrar General,  
Gauhati High Court.