

**IN THE SPECIAL COURT
CONSTITUTED UNDER THE
SPECIAL COURT (TRIAL OF
OFFENCES RELATING TO
TRANSACTIONS IN
SECURITIES ACT, 1992**

**REGULATIONS RELATING TO
PROCEDURE FOR CIVIL
CASES UNDER SECTION 9A(4)
OF THE SPECIAL COURTS ACT,
1992.**

REGULATIONS RELATING TO PROCEDURE FOR CIVIL CASES UNDER SECTION 9A(4) OF THE SPECIAL COURTS ACT, 1992.

1. This Court has been established under the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992 (later enacted as Act 27 of 1992) (hereinafter referred to as "the said Act"). As such the Court has been functioning from June 1992. Prior to the amendment of the said Act in 1994, this Court had the power to give directions regarding properties belonging to Notified Parties (which stood attached by virtue of Section 3(3) of the said Act). Thus the civil jurisdiction was only in the nature of giving directions and incidentally deciding rival claims. It was for this reason that only Petitions and/or Applications were being filed.

2. With effect from 25th January 1994, the said Act. has been amended to confer Jurisdiction of a Civil Court in relation to any matter or claim of a civil nature specified in Section 9A of the amended Act.

3. Without exhausting the categories of cases which come within the jurisdiction of this Court, the Court has noticed that the following categories of cases principally come for consideration of this Court:

(a) Matters where substantive rights or claims to securities, monies and/or properties are involved.

(b) Matters where substantive rights are not involved but directions or orders are sought for reservation of or maintenance of securities, monies or properties or for interim relief's or for permissions or for payment of statutory dues and similar matters.

(c) De-notification Applications.

4. As a rule matters in category (a) should First be filed by way Of Petitions supported by affidavits and replies to the Petitions should be by way of affidavits, the intention being to dispose off the matter as expeditiously as possible on affidavits. If at the first hearing of the Petition or at any stage thereafter the Court finds that the matter cannot be decided on affidavits, the Petition will be converted into a Suit and renumbered accordingly. The affidavit in reply will be considered as the written statement. Any further affidavits already filed will be considered as supplementary pleadings of the parties in the Suit. Any pending matters of category (a) will likewise be considered by the Court. Pending Suits which are transferred to this Court will be continued as Suits.

5. All matters under categories (b) and (c) shall be by way of Applications.

6. On a matter being filed a returnable date will be given by the Officer on Special Duty. Any Application for urgent relief's can be moved on any day at 2.45 pm by getting the papers produced in Court. Normally such Applications must be made only after giving at least 24 hours notice in writing to the party against whom relief is claimed.

7. All Applications and Petitions where no oral evidence is necessary shall be taken up every day in the forenoon for an hour. All Suits, Petitions or matters where Orders for oral evidence is passed by Court shall be given fixed dates. If it appears to Court that a matter fixed on a particular date cannot be taken up on that date, then at 11.00 a.m. or as soon as possible thereafter a fresh date will be fixed. Parties and/or there Advocates must remain present at 11.00 am as only in exceptional cases a change in the date so fixed shall be permitted. It being clarified that once date is fixed, convenience of Counsel / Advocates will not be a ground for adjournment.

8. Service of Suits, Petitions and/or Applications shall be by personal service with acknowledgment or by sending copies of same with all annexures thereto to all counter parties by registered post acknowledgement due and under certificate of posting. The proceedings sent by post as aforesaid must be accompanied by a forwarding letter of the Advocate on record which shall state that the papers are being sent as and by way of service. Proof of service will be by the counter party getting filed a vakalatnama or appearing in Court in person or through Advocate or by an Affidavit of the person who so served annexing thereto the acknowledgment or an Affidavit of the person who personally served along with that of a person who can speak to the identity of the person served or about any other matter necessary to be proved in respect of service.

9. In cases where it has not been possible to serve in the manner laid down above an Application for substituted service can be moved before the Officer on Special Duty. Such Application must be supported by Affidavit pointing out the party to be served and stating when and where and how service was attempted to be made.

10. If service is not effected for a period of three months, from date of filing of the matter, the Officer on Special Duty shall place the matter on board for dismissal. The Officer on Special Duty shall notify such matters on the notice board one week before they are placed on board for dismissal.

11. On being served with a Suit / Petition the Defendant/ Respondent must, file their Written Statement / Affidavit in Reply, as the case may be, within three weeks from the date of service. In cases of Applications, the Affidavit in Reply must be filed within two week of being served. This without waiting for any Orders from / Directions of the Court in this behalf. It

being clarified that no separate Orders will be passed in this behalf. If Written Statement and/or Affidavit in Reply are not filed within the time aforesaid then, unless the Court directs otherwise, the matter shall proceed on the returnable date as an undefended matter. It being clarified that generally no extension of time for filing Written Statements / Affidavits in Reply will be granted. Extension of time, may however be given, in exceptional cases, on payment of costs including, in appropriate case, compensatory costs.

12. The provisions of Order VIII Rules 2 to 5 of the Code of Civil Procedure will apply to all Defendants and/or Respondents and the Written Statements and Affidavits in Reply must comply with those provisions.

13. The provisions of Order VIII Rules 6 to 8 (including 6A to 6G) of the Code of Civil Procedure will apply to all Suits and Petitions. Provided that if a counterclaim is filed in a Petition and it is not convenient or possible to try the same without recording evidence, then the Petition shall be converted into a Suit and proceeded with accordingly.

14. All parties, including Plaintiffs / Petitioners, in Suits and Petitions shall, within three weeks of filing of Written Statement / Affidavit in Reply, file on Affidavit a List of Documents which they are going to rely on or produce at the trial. This will be done without any specific Order to this effect being passed by the court.

15. Each party must serve his pleading on all other parties to the proceeding simultaneously with the filing of that pleading. At the time of supplying the pleading a date and time must also be intimated for giving inspection of the documents relied upon in that pleading. If the time so fixed is not convenient to the other side then, on the same day or latest on the immediately following day, the party wishing to change the.

date and time must contact the party giving inspection and fix up a mutually convenient day and time. This change of date must be such that inspection is to be taken and given within two weeks of receipt of the pleading. Unless the Court Orders otherwise, a party will not be permitted to rely upon or use at the trial. for any purpose whatsoever, any document which has not been disclosed or inspection of which has not been forthwith offered or applied for as aforesaid Any party not taking inspection within time as aforesaid shall neither be allowed to raise any objection nor be entitled to any adjournment. In this behalf it is clarified that merely annexing a list of documents to a pleading will not be deemed to be sufficient compliance with this guideline, unless the notice for taking inspection is also sent with the pleading.

16. In the event of documents being in the possession of some third party including the Custodian or the CBI or the I.T. Dept.. the party relying on them should simultaneously with the filing of the pleading make a written Application for production of those documents in Court and for enabling inspection to be given thereof. On such Applications appropriate Orders, for inspection by all parties, will be passed The fact of the documents being in possession of the Custodian and/or the C.B.I. and / or the I.T. Department will under no circumstances excuse a party from filing pleadings, including the Affidavit with Lists of Documents. within the time aforesaid.

17. After an Appearance has been filed on behalf of a counter party and / or at any stage prior to the date fixed for hearing the parties shall call upon all counter parties (except the Custodian) to admit facts and documents and / or to disclose and produce documents. In this behalf the provisions of Order XI and XII of the Code of Civil Procedure shall be applicable.

18. On the date fixed for first hearing the Court shall (after framing issues in Suits) ascertain from each party and / or his Advocate what facts and documents are admitted either expressly or by implication. The Court shall then record the admission of fact or legal position and take on record all admitted documents. The Court shall then, either on the same day or on any other adjourned date, proceed to try the Suit / Petition on the disputed points.

19. All examination in chief, in matters where oral evidence is necessary shall be by way of Affidavit evidence. Such Affidavit evidence to be supplied to all parties to the proceedings at least two week in advance of the date fixed for hearing. The counter party will state, by a letter addressed to the advocate of the other side, at least one week in advance of the date fixed whether they wish to cross examine the witness. The cross examination to be only on disputed and relevant aspects as permitted by Court.

20. The provisions or Section 75 and Order XXVI (except Rules 13, 14, 19, 20, 21 and 22) of the Code of Civil Procedure will also be made applicable in appropriate cases, on sufficient grounds being made out and after hearing all parties The examination of witnesses on Commission to be conducted by the Officer on Special Duty or such other Officer of this Court or of the High Court as may be nominated by this Court. All expenses for travel. lodging and boarding of the Officer to be borne. in the first instance. by the party applying for Commission.

21. It is clarified that on the day fixed for trial no adjournment as of right will be granted on the ground that the procedure set out above, has not yet been completed. Even if the procedure is not complete the Suit/ Petition shall proceed on the facts stated in the Pleadings and OJ) documents disclosed.

22. After oral evidence has been recorded a date will be fixed for arguments. Written submissions on law (with case law if any relied upon) and facts must be submitted to Court and exchanged between the parties at least one week in advance of the day fixed for arguments. The Court would appreciate if the written submissions are also supplied to Court on a computer floppy. All parties will exchange their written submission (without waiting for the other side to give their written submissions) on the date which will be fixed by Court. Oral submissions will be restricted only on those aspects on which the Court wishes to hear submissions and a limited time will be granted to Advocates to argue on such aspects as they consider very important and/or which they wish to highlight and / or in reply to submissions of the other party.

23. The provision of Sec 35, 35A, 35B and order XXA Rule (1) (a) to (1) (r) of the code of civil procedure will apply with the exception that the Special Court is not bound by the limits laid down in Section 35A. The costs which may be awarded, will be, as far as possible, in consonance with the actual costs incurred in prosecuting or defending a matter. Apart from and in addition to the costs of the Sum / Petition / Application compensatory costs shall also be awarded against a party who had been called upon to admit facts and / or documents and who in the opinion of the Court, wrongly failed to admit such facts or documents.

24. The provisions of Order XXIV of the Code of Civil Procedure will apply.

25. The provisions of Section 114 (a) and (b), Order XLVII Rule (1)(a) and (b), Rules 2, 4, 7, 8, 9 and Section 151 of the Code of Civil Procedure will also apply.

26. In cases of Suits and Petitions by third parties Court Fees will have to be paid as per the Bombay Court Fees Act. In cases of Applications also Court Fees will have to be paid if called upon to do so by Court. No Court Fees will be paid by Custodian or Notified Parties.

27. In appropriate cases, in the discretion of the Court other provisions of the Code of Civil Procedure will also be made applicable.

28. These Regulations, may from time to time, be modified and / or changed in the light of experience. The Court reserves the right to relax the Regulations or directions contained therein in appropriate cases in the interest of Justice.

29. In all pending matters, where appropriate directions have not been already issued, the time laid down in these guidelines to do various things will become operative with effect from 15th September 1994.

30. In these guidelines, in appropriate cases, reference to (a) Matter shall include Suits, Petitions / Applications. (b) Plaintiff shall include Petitioner / Applicant. (c) Pleadings shall include Complaint / Written Statement / Petitions / Applications / all Affidavits including Affidavits of Documents. (d) Plaintiff shall include Petitioner / Applicant. (e) Defendant shall include Respondent. (1) Decree shall include Order / Judgment

Sd/ _
Judge,
Special Court(TORTS),
Bombay