Chapter 6 - Disputes and Arbitration

- Disputes and Arbitration (45 to 49)
- Disputes and Arbitration (49 to 50)
- Disputes and Arbitration (50 to 55)
- Disputes and Arbitration (55 to 56)
- Disputes and Arbitration (56)
- Disputes and Arbitration (56 - 57)

Disputes and Arbitration (45 to 49)

Chapter VI

Disputes and Arbitration

45. Reference of dispute.—A reference of a dispute under Section 64 shall be made in writing to the Registrar in form XVII Wherever necessary, the Registrar may require the party feferring the dispute to him to produce a certified copy of the relevant records on which the dispute is based and such other statements or records as may be required by him, before the proceeding with the consideration of such reference.

46. Registrar’s satisfaction regarding existence of a dispute.- Where any reference of a dispute is made to the Registrar or any matter is brought to his notice, the Registrar shall, on the basis of the reference (if any) made to him in Form XVII and the relevant records and statements submitted to him, record his decision together with the reasons therefor, whether he is or is not satisfied about the existence of a dispute within the meaning of Section64. Such recording of decision shall be sufficient proof of the Registrar’s satisfaction whether the matters is or is not a dispute as the case may be.

47. Disposal of a dispute or reference to a nominee. —(1) Where the Registrar is satisfied that there is a dispute the Registrar may decide the dispute himself or refer it for disposal to his nominee.

(2) Neither the Registrar nor his nominee shall take up for consideration any dispute, unless the parties concerned comply with the conditions of affixing the Court fees specified in Rule 57 for determining the dispute.

48. Qualifications for appointment as Registrar's nominees.—

(1) The State Government may appoint a person to be a Registrar's nominee provided that,--

(a) he has practiced as an Advocate, Pleader or Vakil for not less than five years,

or

(b) he is enrolled as an Advocate, or holds a degree or other qualification in law of any University established by law or of any other authority which entitles him to be enrolled as an Advocate, and either(i) has held office not lower in rank than that of Deputy Registrar of Chits for not less than five years or (ii) possesses good knowledge and experience of chit funds legislation and practice.

(2) The State Government may, by notification in the official Gazette, appoint as many persons as might be necessary to act as Registrar's nominees for settlement of disputes arising under the Act.

(49) Procedure for hearing and decision of disputes. —(1) The Registrar or his nominee shall record in the official language in vogue in the State, evidence of the parties to the dispute and the witnesses who attend. Upon the evidence so recorded and upon consideration of any documentary evidence produced by the parties, a decision shall be given by him in writing. Such decision shall be pronounced in the open Court, either at once

or as soon as may be practicable on some future day, of which due notice shall be given to the parties.

Disputes and Arbitration (49 to 50)

(2) Where neither party appears when the dispute is called out for hearing, the Registrar or his nominee may make an order that it be dismissed for default.

(3) Where the opponent appears and the disputant does not appear when the dispute is called out for hearing, the Registrar or his nominee may make an order that the dispute be dismissed, unless the opponent admits the claims or a part thereof, in which case the Registrar or his nominee, as the case may be, may make an order against the opponent upon such admission, and where, part only of the claim is admitted, may dismiss the dispute in so far as it relates to the remainder.

(4) Where the disputant appears and the opponent does not appear when the dispute is called out for hearing, then if the Registrar or his nominee is satisfied from the record and proceeding that the summons was duly served, the Registrar or his nominee may proceed with the dispute ex parte. Where the summons is served by any officer of the Registrar or his nominee, he shall make his report of service on oath.

(5) The Registrar or his nominee may not ordinarily grant more than two adjournments to each party to the dispute at his request. The Registrar or his nominee may, however, at his discretion grant such further adjournments on payment of such costs to the other side and such fees to the Registrar or his nominee, as the case may be, may direct.

(6) Any party to a dispute may apply for and obtain a certified copy of any order, judgment or award made by the Registrar or his nominee on payment of copying fees, at the rate prescribed Appendix II.

(50) Summonses, notices and fixing of dates, places, etc., in connection with the disputes.—(1) The Registrar or, as the case may be, his nominee, may issue summonses or notices at least fifteen days before the date fixed for the hearing of the dispute requiring.

(i) the attendance of the parties to the dispute and of witnesses, if any; and

(ii) the production of all books and documents relating to the matter in dispute.

(2) Summonses or notices issued by the Registrar or his nominee may be served through a Tahsildar or any employee of the Chit Department or by registered post with acknowledgment due.

(3) The Officer serving a summons or notice shall, in all cases in which summons or notice has been served, endorse annex or cause to be endorsed on or annexed to, the original summons or notice, a return stating the time when, and the manner in which, the summons or, notice as the case may be was served, and the name and address of the person(if any) identifying the person served and witnessing the delivery or tender of the summons or the notice.

(4) The Official issuing the summons or notice my examine the serving officer on oath or cause him to be so examined by the Officer through whom it is served and may make such further inquiry in the matter as he thinks fit; and shall either declare that the summons or, notice as the case may be, has been duly served or order it to be served in such manner as he thinks fit.

Disputes and Arbitration (50 to 55)

(5) The mode of serving summonses and notices as laid down in Sub- rules (1) to (4) shall mutatis mutandis apply to the service of summonses or notices issued by the Registrar or the person authorized by him when acting under Section46.

51. Investigation of claims and objections against any attachment.—Where any claim or objection has been preferred against the attachment of any property under Section 68 on the ground that such property is not liable to such attachment, the Registrar, or as the case may be, his nominee shall investigate into the claim or objection and dispose it of on merits: Provided that no such investigation shall be made when the Registrar or his nominee considers that the claim or objection is frivolous.

52. Procedure for the custody of property attached under Section 6.—(1) Where the property to be attached is movable property, other than agricultural produce in the possession of the debtor, the attachment shall be made by actual seizure and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, or of a Receiver, if one is appointed under sub-rule (2) and, shall be responsible for the due custody thereof: Provided that, when the property seized is subject to speedy and natural decay, or when the expenses of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

(2) Where it appears to the officer ordering conditional attachment under Section 68 to be just and convenient, he may

appoint a Receiver for the custody of the movable property attached under that Section and his duties and liabilities shall be identical with those of a Receiver appointed under Order XL in the First Schedule to the Code of Civil Procedure,1908.

(3) (i) Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(ii) The order shall be proclaimed at some places on, or adjacent, to such property by beat of drums or other customary mode, and a copy of the order shall be fixed on a conspicuous part of the property and upon conspicuous part of the village chavadi and where the property is land paying revenue to the State Government also, in the office of the Collector of the district, the Revenue Divisional Officer and Tahsildar within whose jurisdiction the property is situated.

53. Procedure for attachment and sale of property for realization of any security given by person in course of execution proceedings.— The procedure laid down in Rules 51 and 52 shall mutatis mutandis apply for attachment and sale of property for the realization of any security given by a person in the course of execution proceedings.

54. Issue of proclamation prohibiting private transfer of property.—The Registrar when acting under clause(a) of Section 71 shall, at the time of signing a certificate affecting any property, issue a proclamation in Form XVIII and in the case of immovable property shall also forward a copy of the proclamation to the Tahsildar or any other revenue officer within whose jurisdiction the property is situated, who shall cause an entry about such certificate to be made in the Record of Right.

55. Procedure for execution of awards.—(1) Every order or award passed by the Registrar, or his nominee under Section 68 or 69 shall be forwarded by the Registrar to the foreman or to the party concerned with instructions that the foreman or as the case may be, the party concerned should initiate execution proceedings forthwith according to the provisions of Section 71.

Disputes and Arbitration (55 to 56)

(2) If the amount due under the award is not forthwith recovered, or the order thereunder is not carried out, it shall be forwarded to the Registrar with an application for execution along with all information required by the Registrar, for the issue of certificate under Section 71. The applicant shall state whether he desires to execute the award through a Civil Court or through the revenue authorities as provided under Section 71.

(3) On receipt of such application for execution, the Registrar shall forward the same to the proper authority for execution along with a certificate issued by him under Section 71 and a proclamation issued under rule 54 in the manner prescribed therein.

56. Transfer of property which cannot be sold.—(1) When in execution of an order sought to be executed under Section 71, any property cannot be sold for want of buyers, of such property is in the possession of the defaulters or of some person on his behalf or of some person claiming it under a title created by the defaulter subsequent to the issue of the certificate by the Registrar under clause (a) or (b) of the said section the officer conducting the execution shall a soon as practicable report the fact to the Courtor the Collector or the Registrar, as the case may be, and the judgment creditor applying for the execution of the said order.

(2) On receipt of a report under sub-rule (1), the judgment creditor may, within six months from the date of the receipt of the report or within such further period as may for sufficient reasons be allowed in any particular case by the Court or the Collector or the

Registrar, submit an application in writing to the Court, the Collector or the Registrar, as the case may be stating whether or not he agrees to take over such property.

(3) On receipt of an application under sub-rule (2) notices, shall be issued to the defaulter and to all persons known to be interested in the property, including those whose names appear in the Record of Rights as persons holding any interest in the property, about the intended transfer.

(4) On receipt of such a notice, the defaulter, or any person owning such property, or holding an interest therein by virtue of a title acquired before the date of the issue of a certificate under Section 71, may, within one month from the date of the receipt of such notice, deposit with Court or the Collector or the Registrar, for payment to the foreman a sum equal to the amount due under the order sought to be executed together with interest thereon and such additional sum for payment of costs and other incidental expenses as may be determined in this behalf by the Court or the Collector or the Registrar, as the case may be.

(5) On failure of the defaulter, or any person interested, or any person holding any interest in the property, to deposit the amount under sub-rule (4), the Court or the Collector or the Registrar, as the case may be, shall direct the property to be transferred to the judgment creditor on the conditions stated in the certificate in form XIX.

(6) The certificate granted under sub-rule (5) shall state whether the property is transferred to the judgment creditor in full or partial satisfaction of the amount due to him from the defaulter.

Disputes and Arbitration (56)

(7) If the property is transferred to the judgment creditor in partial satisfaction of the amount due to him from the defaulter, the Court or the Collector or the Registrar, as the case may be, shall on the production by the judgment creditor of a certificate signed by the Registrar, recover the balance due in the manner laid down in Section 71.

(8) The transfer of the property under sub-rule (5) shall be effected as follows:-

(i) In the case of movable property–

(a) Where the property is in the possession of the defaulter himself or has been taken possession of on behalf of the Court or the Collector or the Registrar, it shall be delivered to the judgment creditor.

(b) Where the property is in the possession of some person on behalf of a defaulter, the delivery thereof shall be made by giving notice to the person in possession directing him to give actual peaceful possession to the judgment creditor and prohibiting him from delivering possession of the property to any other person.

(c) The property shall be delivered to a person authorized by the party to take possession on behalf of the judgment creditor.

(ii) In the case of immovable property--

(a) Where the property is growing or standing crop, it may be delivered to the judgment creditor before it is cut and gathered and the judgment creditor shall be entitled to enter on the land and to do all that is necessary for the purpose of tending and cutting and gathering it.

(b) Where the property is in the possession of the defaulter or of some person on his behalf or some person claiming under a title created by the defaulter subsequent to the issue of a certificate under Section 71, the Court or the Collector or the Registrar, as the case may be, shall order delivery to be made by putting the judgment creditor or any person whom he may appoint to receive delivery on his behalf in actual possession of the property and if need be by removing any person who illegally refuses to vacate the same.

(c) Where the property is in the possession of a tenant or other person entitled to hold the same by a title acquired before the date of issue of a certificate under Section 71, the Court or the Collector or the Registrar, as the case may be, shall order delivery to be made by affixing a copy of the certificate of transfer of the property and proclaiming to such person by beat of drum or other customary mode at some convenient place that the interest of the defaulter has been transferred to the judgment creditor.

(9) The judgment creditor shall be required to pay expenses incidental to sale including the cost of maintenance of livestock, if any, according to such scale as may be fixed by the Registrar from time to time.

(10) Where land is transferred to the judgment creditor under sub-clause (a) of clause (ii) of sub-rule (8) before the growing or standing crop is cut and gathered, the judgment creditor shall be liable to pay the current year’s land revenue on the land.

Disputes and Arbitration (56 - 57)

(11) The judgment creditor shall forthwith report any transfer of property under sub-clause (b) or (c) of clause (ii) of sub-rule (8) to the Village Administrative Officer for information and entry in the Record of Rights.

(12) The judgment creditor to whom property is transferred under sub-rule (5) shall maintain for each such defaulter a separate account showing all the expenses incurred including payment to outside encumbrances, land revenue and other dues on the property and all the income derived from it.

(13) The judgment creditor to whom property is transferred under sub-rule (5) shall use his best endeavour to sell the property as soon as practicable to the best advantage of the foreman as well as that of the defaulter, the first option being always given to the defaulter who originally owned the property. The sale shall be subject to confirmation by the Registrar. The proceeds of the sale shall be applied to defraying the expenses of the sale and other expenses incurred by the judgment creditor and referred to in sub-rules (9) and (12) and to the payment of the arrears due by the defaulter under the order in execution, and the surplus (if any), shall then be paid to the defaulter.

(14) Until the property is sold, the judgment creditor to whom the property is transferred under sub-rule (5) shall use his best endeavour to lease it or to make any other use that can be made of it so as to derive the largest possible income from the property.

(15) When the judgment creditor to whom property is transferred under sub-rule (5) has realized all his dues, under the order in execution of which the property, the property, if unsold shall be restored to the defaulter.

57.Payment of fees for decisions of disputes.-- (1) The Registrar or his nominee, as the case may be, on the application in form XVII and payment of fees prescribed in Appendix II may take a dispute and file.

(2) No document of any of the kinds specified below shall be filled before the Registrar or his nominee unless it is affixed with the proper court-fee stamp as specified against it.

Proper Court-fee

	Rs. p.
(i) Vakalatnama	2.00
(ii) Application for adjournment	10.00
(iii) Application for interim stay or relief	25.00

(3) (a) The Registrar or his nominee deciding any dispute may require the party or parties to the dispute to deposit such sum as may be in his opinion be necessary to meet the expense, including payment of fees to the Registrar or his nominee as the case may be.

(b) The Registrar or his nominee shall have power to order the fees and expenses of determining the dispute to be paid by the foreman out of his funds or by such party, or parties to the dispute, as he may think fit, according to the scale laid down by the Registrar, after taking into account the amount deposited as above.

(c) The Registrar may be general or special order specify the scale of fee and expenses to be paid to him or his nominee.