



# കേരള ഗസറ്റ് KERALA GAZETTE

ആധികാരികമായി പ്രസിദ്ധപ്പെടുത്തുന്നത്  
PUBLISHED BY AUTHORITY

വാല്യം 7 Vol. VII	തിരുവനന്തപുരം, ചൊവ്വ Thiruvananthapuram, Tuesday	2018 ജൂലൈ 3 3rd July 2018	നമ്പർ No.	} 27
		1193 മിഥുനം 19 19th Mithunam 1193		
		1940 ആഷാഢം 12 12th Ashadha 1940		

## PART III

# Judicial Department

### THE HIGH COURT OF KERALA

#### NOTIFICATION

No. D1-11392/2014. 13th June 2018.

In exercise of the powers conferred by Article 225 of the Constitution of India, Section 122 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) and of all other powers hereunto enabling it in this behalf, the High Court of Kerala, after previous publication of the draft Rules in the Kerala Gazette No. 29, Volume VI, dated 18th July, 2017 as Notification No. D1-11392/2014, dated 16th June, 2017, no objection or suggestion having been received thereon, and with the previous approval of the Government of Kerala conveyed in G.O. (Rt.) No. 267/2018/Home dated 24-1-2018, hereby makes the following Rules further to amend the Rules of the High Court of Kerala, 1971, namely:—

#### RULES

##### 1. Short title and commencement:

(1) These Rules may be called the Rules of the High Court of the Kerala (Amendment), 2018.

(2) They shall come into force at once.

##### 2. Amendment of the Rules:

In the Rules of the High Court of Kerala, 1971,—

(1) In Rule 41, for the existing clause (c), the following clause shall be substituted, namely:

‘(c) Duly authenticated copy of the Writ Petition/ Original Petition, affidavits including counter and reply affidavits and statements, if any, filed in the Writ Petition/ Original Petition and annexures thereto, in the case of Writ Appeals filed, in which urgent memos are filed along with it or within one month of its institution and Writ Appeals filed against interim orders in pending Writ Petitions/Original Petitions.’;

(2) In Rule 51, in sub rule (1), for the existing proviso, the following proviso shall be substituted, namely:—

‘Provided that any process may be ordered to be served in the manner directed by the Court.’

(3) Rule 51A shall be renumbered as Rule 51D and before Rule 51D so renumbered, the following rules shall be inserted, namely:—

**‘51A. Service of notice:** Where the notice is sought to be served by an officer of the court or of a subordinate court, if the respondent is absent from his residence at the time when the service of notice is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the notice on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

*Explanation.*—A servant is not a member of the family within the meaning of this rule.

**51B. Service of notice by affixing:** Where the respondent or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the respondent who is absent from his residence at the time when the service of notice is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the notice on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the notice on the outer door or some other conspicuous part of the house in which the respondent ordinarily resides or carries on business or personally works for gain, and shall then return the original to the court with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

**51C. Substituted service:** (1) Where the Court is satisfied that there is reason to believe that the respondent is keeping out of the way for the purpose of avoiding service, or that for any other reason the notice cannot be served in the ordinary way, the court shall order the notice to be served by affixing a copy thereof in some conspicuous

place in the court, and also upon some conspicuous part of the house, if any, in which the respondent is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit.

(2) Where the court acting under sub rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the respondent is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

(3) Service substituted by order of the court shall be as effectual as if it had been made on the respondent personally.

(4) Where service is substituted by order of the court, the court shall fix such time for the appearance of the respondent as the case may require.’

By order,

N. ANIL KUMAR,  
Registrar General.

Kochi-682 031.

#### **Explanatory Note**

(This does not form part of the notification, but is intended to indicate its general purport).

As per the existing clause (c) of Rule 41 of the Rules of the High Court of Kerala, 1971, copies of the entire pleadings and documents which were before the learned Single Judge are to be filed along with the memorandum of Writ Appeal. This is reportedly causing much inconvenience to the litigants. Since Writ Appeals are in the nature of intra court appeals, the entire pleadings and documents in the proceedings before the Single Judge are available with the High Court. Hence, their production needs to be insisted only where urgent motion is made in the Writ Appeal or where the appeal is filed against an interim order. In other cases, production of such papers can be dispensed with. Hence the amendment to Rule 41.

Rule 51 of the Rules of the High Court of Kerala, 1971 deals with service of notices. However, it does not contain any provision as in the Code of Civil Procedure, 1908 as to the procedure where the respondent refuses to accept notice or where he cannot be found. The lacuna needs to be filled in.

The notification is intended to achieve the above objectives.