

CHAPTER IX  
Interlocutory Applications

**1. Form**—Every interlocutory application shall be instituted in the suit or matter in which it is filed.

**2. Contents of applications**—(i) Except where otherwise provided by these Rules or by any law for the time being in force, an interlocutory application:

(a) shall contain only one prayer or one series of alternative prayers of the same kind;

(b) shall not contain any argumentative matter;

(c) shall be supported by affidavit stating clearly the grounds and the facts on which the application is based.

(ii) Copies of the application, affidavit and of such other documents annexed thereto as the Registrar may direct shall also be filed for being served on the opposite side.

**3. Counter-affidavits etc.**—(i) Unless otherwise ordered by the Court, counter-affidavit shall be filed not less than four days before the hearing.

(ii) Not more than one affidavit in rejoinder may be filed without the leave of the Court. Such affidavit, unless otherwise ordered by the Court, shall be filed not less than two days before the date of hearing. Such affidavit shall be confined strictly to matter of reply.

(iii) No counter-affidavit and no affidavit in rejoinder shall be filed unless a copy thereof and copies of annexures thereto, if any, have been previously served on each party or his advocate. Parties or their Advocates served with such copies shall give a receipt therefor. Copies shall be authenticated by the signature or initials of the parties or their advocates at the end of the copy.

(iv) Except by leave of the Court, no affidavit in support of an application no counter-affidavit and no affidavit in rejoinder beyond those which are filed and copies of which with annexures thereto served in time as aforesaid shall be used at the hearing or allowed on taxation.

(v) Where any affidavit, counter-affidavit or affidavit in rejoinder is not filed or served as aforesaid it shall be kept separately in the record of the case until leave of the Court has been obtained under sub-rule (iv).

**COMMENTS**

Where the application is an 'interlocutory application' within the meaning of Chapter IX of the Delhi High Court (Original Side) Rules, 1967 (hereinafter referred to as 'the Original Side Rules'). In terms of the provisions of the Original Side Rules, contained in Chapter IX, it is obligatory that there has to be a supporting affidavit stating clearly the grounds and the facts on which the application is based. From a perusal of the application, it is apparent that neither the application nor the supporting affidavit has

been signed by the applicant. The supporting affidavit and the application both have been signed by the applicant but by Shri Narender Singh Jain, counsel for the applicant. It is the party filing the application is supposed to have the knowledge of the facts and not the counsel representing the party. The present 'interlocutory application', filed by the applicant, in my opinion, deserves to be rejected on the ground of non-compliance of the above said statutory provisions of the Original Side Rules. *Raj Kumar Kapur v. Krishan Kumar Kapur*, 1998 (44) DRJ 206 : 1998 RLR 29 : 1998 (1) AD (Delhi) 121.

The rules in Chapter IX of Delhi High Court Original Side Rules and Rules 5, 6 and 7 of Chapter 1-C of Vol. V of Punjab High Court Rules and Orders which are concerning interlocutory proceedings are not mandatory in nature, inspite of the use of word 'shall'. They are merely directory. When the defects regarding presentation of complaint or absence of signature or verification are treated as mere irregularity, which can be cured at a date subsequent to the date of filing the suit and date of institution of the plaint, would not change, there is no reason why the same position should not hold good even in respect of the applications for the substitution of L.R's. *Suraj Kund Temple and another v. Rama Kant and others*, AIR 1989 H.P. 59.