

LAW SCHOOL NOTES

SUBJECT TITLE:

PLEADINGS

PROCEDURAL GUIDELINES



Prepared by Adv. Govinda S. Zalte | For educational use only
Contact: +91 77987 90378 | Email: govindazalte2001@gmail.com

Pleadings

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(A)

Order VI

- a) Material facts
- b) forms of pleading
- c) Condⁿ Precedent
- d) Presumption of law
- e) striking out / Amendment.

(B)

Plaint (Order VII)

- ↳ Particulars (esp. in money suits for imm. prop.)
- ↳ showing of defendant's interest & liability
- ↳ Ground of Limitation
- ↳ Return of Plaintiff
- ↳ Rejection of Plaintiff
- ↳ Prodⁿ & Listing of Documents

(C)

Written Statements (O. VIII)

- ↳ Counter claim
- ↳ Set off
- ↳ Framing of Issues
- ↳ Appearances & Examination

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↳ Appearance

↳ Ex-parte procedure

↳ Default of position

↳ Summoning & attendance of witness

↳ Examination, Admission, production, impugning, return of doc

↳ Hearing

↳ Affidavit

(E)

Adjournment (O. XVII)

↳ Adjournment

↳ Judicial Discretion

↳ Problems - Accrual

(A)

Pleadings

Rule 1 :- Defn of Pleading

Rule 2 :- fundamental principles of pleading

Rule 3-13 :- Parties to supply necc. particulars

Rule 14-15 :- signing & verification of pleading

Rule 16 - empower court to strike down unnec. pleading

Rule 17-18 :- Amendment of pleadings

(I) Definition of Pleading [R.1]

Pleading shall mean plaint or written statement.

(II) Fundamental Principles of Pleading [R.2]

- 1) Pleading should state facts & not law
- 2) The facts should be material facts
- 3) Pleading should not state the evidence
- 4) The facts should be stated in concise form

(III) Two types of facts

- a) Facta probanda
- b) Facta probantia

Pleading should only contain facta probanda

* Material facts

- not defined in the code
- It means all facts upon which plaintiff's cause of action or defendant's defence depends
- All those facts which must be proved in order to est. the plaintiff's right to relief claimed in the plaint.

[Union Bank of India v. Sita Ram Jaiswal (1976) SC]

- Udhav Singh v. Madhav Rao Scindia (1971) SC
- S.C. defined material facts as all the primary facts which must be proved at the trial by a party to est. the existence of a cause of action or his defence are material facts.

→ Difference b/w Material facts & particulars

Material facts are primary & basic facts

Particulars are details in support of material facts

[Virendra Nath v. Satpal Singh]

- Material facts are depend on case and there is no universal application can be laid down

[Madiraju Venkata Ramana Raju v. P. R. Reddy]

* Forms of Pleading

- Appendix A when applicable
- when not applicable form of like character
- Add description of plaint & W.S.

* Condition Precedent. (Rule 6)

- > A condition which must be fulfilled. (performance or occurrence)
- > It need not be pleaded since it is implied in pleadings
- > Non-performance must be specifically mentioned

* Presumption of Law [Rule 13]

- > Neither need to plead law
- > Pleading should only state material facts
- > Need not state any matter of fact which law presumes in his favour

* Striking out of Pleading. [Rule 16]

- Court may at any stage of proceeding order to strike any matter in pleading.

- It can do so in following cases:

- a) which may be unnecessary, scandalous, frivolous or vexatious
- b) which may tend to prejudice, embarrass or delay the fair trial of suit.
- c) such pleading is otherwise an abuse of process of court

- Limited scope

- This power must be sparingly used by the courts with circumspection & on basis of rational principle

Sathu Vijay Kumar v. Tota Singh (2016) SC

- Power to strike out pleading is extraordinary in nature & must be exercised by court sparingly & with extreme care & caution!

* Amendment of Pleadings [Rule 17, 18]

- Court may at any stage of proceeding allow either party to alter & amend
- in such manner which may be just
- purpose shall be to determine real question in controversy
- To meet ends of justice
- Discretion of court [R. 17]
- R. 17 apply at all other proceeding Ref. Dkt, Arbitration, LAR, etc.
- If R. 17 cannot be applied, resort of Sec 151 can be taken

Rule 18 :- If party fail to amend within sp^t stipulated time after order of court

- If no time provided 14 days.
- No permitted to amend after expiration of such period
- Unless court extends time

Abdul Rehman v. Mohd. Ruddy (2012) 5 C

If appⁿ for amendment of plaint is filed after commencement of a trial, it has to be shown that in spite of due diligence it could not have been sought earlier. The courts should try the merits of case that come before them & should, consequently allow all amendments that may be nec. for determining the real question in controversy between the parties provided it does not cause prejudice to the other party.

Plaint is a statement of claim, a document by presentation of which suit is instituted.

Date

Page No.

* Plaint

(a) Particulars of Plaint

- i) Name & title of Court.
- ii) Name, description & place of residence of plaintiff.
- iii) ~~Name, description & place of residence of defendant.~~
- iv) If p/d is minor, unsound, a statement to that effect.
- v) Cause of action - when it arose.
- vi) Facts showing court has jurisdiction.
- vii) Relief claimed by Plaintiff.
- viii) where plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.
- ix) Court fees

Rule 2 In money suits

- x) state the precise amount claimed

In mesne profit, for debts, unsettled account for movable in possession of defendant.

- xi) state approx amount or value sued for

Rule 3 Subject matter of suit is immovable prop.

- xii) Description of prop. (sufficient to identify.)

↳ boundaries

↳ No. in record of settlement or survey

Rule 5 Defendant's interest & liability to be shown

Rule 6 Grounds ~~for~~ ^{of} exemption from limitation law

- If suit instituted after expiration of limitation

Rule 10 Return of Plaintiff

- Where at any stage of the suit, the court finds it has no jurisdiction to try the suit, it will be presented return the plaint to be presented to proper court.
- cannot be dismissed.
- Court of Appeal or Revision may direct only after setting aside of decree.
- On returning of plaint, Judge shall endorse date of presentation & return and brief statement of reason for returning.

Rule 10A Procedure to be followed by a court before plaint is returned to be presented to proper court.

- Court to intimate to plaintiff of the same.
- Under sub-rule (2) plaintiff can make Appⁿ to court for → specifying court where it is to be presented → to fix date for appearance → 'notice of date' be given to defendant.
- Thus no need to re-issue summons. (R. 10A (4))

Rule 10B Power of Appellate Court to transfer suit to proper court

- Appeal on order for return of plaint.

Amar Chand Inani v. U.O.I. (1973) SCC

It was held by the court that when a plaint is filed in the proper court, after getting it back from the wrong court, it cannot be said to be continuation of the suit and the suit must be deemed to commence when a plaint is filed in proper court.

Rule 11 Rejection of Plaintiff

→ Mandatory provision

→ It shall be rejected in following cases

i) does not disclose cause of action

ii) ~~where~~ relief claim is undervalued, plaintiff fails to correct it

iii) Insufficient stamp & plaintiff fails to do so even on intimated by court

iv) suit appears from the statement in the plaint to be barred by any law

v) plaint is not filed in duplicate

vi) non-compliance of Rule-9

vii) If plaint is signed by person not authorized by Plaintiff & not cured

viii) within time granted by court

ix) Plaint is found to be vexatious & meritless

Rule 12 → Judge shall record reasons. Reasoned orders while rejecting plaintiffRule 13 → shall not preclude any person to file fresh suit on same cause of action.

→ Order rejecting plaintiff is deemed to be 'deceit'

→ hence appealable

* Ganesh Trading Co. v. Miji Ram (1978) SC- It has held that cause of action may be described as bundle of ~~eight~~ essential facts which is nec. for plaintiff to prove before he succeeds* Mayar (H.K.) Ltd v. Owner & Parties M.V. Forture Exp. (2001) SC- Court observed plaintiff cannot be rejected on the basis of allegations made in W.S. or Appⁿ for rejection of plaintiff. Court has read entire plaint & make out whether it discloses cause of action or not

* Production & Listing of Documents [Rule 14-17] by plaintiff
- Plaintiff to produce all doc. at time of presentation of suit
- It provides for list of doc. to present them or annexed to plaint
- for doc. in power & possession of plaintiff.

- (2) where doc. not in possession of plaintiff.
↳ state in plaint in whose possession the doc. is.
- (3) Doc. which is not in list or added or annexed shall not be received in evidence w/o leave of the court.

(4) ~~Nothing of this~~ Court has discretion to allow or disallow production of documents at a late stage.

* Exception to R. 14

- i) Doc. reserved for cross-examination of defendant's witness
- ii) Doc. handed over to witness to refresh memory

(C) Written Statement (O. 8)

(I) Meaning - Reply to the plaint.

- must be filed within 30 days of service of summons (R.1).
- It can be extended to 90 days (for reasons recorded by court)

(II) Relevant provision

→ Rule 2A Duty of def. to produce doc. upon which he relies
[Same as O. 7 R. 14]

Iridium India Telecom Ltd. v. Motorola Inc. AIR (2005) SC

- O. 8 R. 1 does not apply to suits filed on original side of chartered H.C.

Rule 2 New facts must be specifically stated

(III) Denial

R. 3 Denial to be specific with each allegation of plaintiff.

Evasive Denial specific denial

> Non-denial amounts to admission of fact.

[M. Jeetendra Gandhi v. Huthappa AIR (1999) 1000] Kae]

> Pleading of ignorance of plaintiff amounts to admission of the averments unless contrary is proved by implication.

[Smt. Roop Bai v. Mahaveer AIR (1994) Raj 133]

* Salem Advocate Bar Association v. Union of India (2005)

→ U/O.B Rule 1 upper limit of 90 days to file W.S. is directory.

* Consequences of not filing W.S.

U/R 5(2) court can pronounce on the basis of facts contained in plaint.

* Counter claim Set-off (O.8, R.6)

(I) Meaning - a claim set up against another.

- It is a cross-claim which partly offsets the original claim.

(II) Parties

- Here both parties are debtor and creditor against each other.

- one debt may be settled against another (mutual debts)

- It is a plea in defence available to defendant.

(III) Application

O.8 R.6 :- In suit for recovery of money.

↳ Legal Set off

Jayanti Lal v. Abdul Aziz AIR (1958) Patna

H.C. defined set off as "the extinction of debts of which two persons are reciprocal debts to one another by the credit of which they are reciprocally creditors to one another."

(IV) Conditions for set-off [Jayanti Lal v. Abdul Aziz AIR (1955)]

1) The suit must be for recovery of money.

2) The sum of money must be ascertained.

- 3) Such sum must be legally recoverable.
- 4) It must be recoverable by defendant / or by all defendants.
- 5) It must be recoverable by defendant from plaintiff.
- 6) It must not exceed pecuniary jurisdiction of the court.
- 7) Both parties must fill, in the defendant's claim to set-off, the same character or they fill in the plaintiff's suit.

* Effects :-

- i) When def. pleads set off, he is put in possession of a plaintiff as regards the amount claimed by him.
- ii) If suit of plaintiff is not sustained, it does not affect the claim for set off by defendant.
- iii) Rules relating to W.S. apply to set-off in answer to claim of set-off.

* Counter-claim [O. 8, R. 6A] → Amendment of 1976

(I) Meaning - a claim made by defendant in a suit against the plaintiff.

- It is a cross-action / cross-suit → Must be under pecuniary jurisdiction

(II) Counter claim / Effect

- i) shall be treated as plaint (R.4)
- ii) The plaintiff can file W.S. in respect of counter claim (R-3)
(Court can fix time period for the same)
- iii) Even if the suit of plaintiff is dismissed, stayed, discontinued or withdrawn, it will be decided on merits. [Rule 6D]
- iv) Counter claim will be governed by rules of plaint, whereas reply to counter claim by rules of W.S. [Rule 6E]

(III) Object

→ To avoid multiplicity of suits / proceedings.

Quebachan Singh v. Baj Singh (1996) S.C.

(Order IX) (O.9).

* Appearance of Parties & Consequences of Non-appearance [

Rule 1 Parties must present themselves on the day of hearing of suit or by respective pleader

① * Consequences of Non-Appearance of parties

- 1) If both parties are absent suit will be dismissed (2nd suit allowed) (Rule 3)
- 2) If plaintiff is absent suit will be dismissed (AO 2nd suit) (Rule 9)
- 3) If defendant is absent, an ex-parte decree can be passed (Rule 6)

— Res judicata does not apply to Rule 3.

* Remedies for dismissal of suit under Order 9 Rule 9

- 1) Second suit on same cause of action
- 2) An application to set aside such dismissal showing sufficient cause.

② Absence of defendant (Rule 6, 10)

- If def is absent, the plaintiff has to prove service of summons.
- then court may pass ex-parte decree against the defendant but the plaintiff must prove his case.

* Remedies

Defendant against whom ex-parte decree is passed has following

1) Appⁿ to set aside ex-parte order (O.9 R 13)

2) Appeal against such decree (S. 96(2))

3) Review (O.47, R. 1)

4) To file a suit on ground of fraud

③ Non-appearance of Plaintiff (R 8-11)

Consequences

- 1) If defendant does accept plaintiff's claim, suit will be dismissed wholly.
- 2) If defendant accepts claim partially, a decree in respect of such claim will be passed (Rule 8)

3) If plaintiff does not appear due to his death, his suit cannot be dismissed. [Raja Devi Batshu v. Habib Shah (1913) PC]

Remedies to Plaintiff.

- 1) Appⁿ to set aside order of dismissal
- 2) Appeal (S. 96)
- 3) Review (S. 114, O. 17)
- 4) Revision (S. 115)

④* Ex-parte Decree

- a decree passed in absence of defendant.

* Remedies available to plaintiff:

- 1) Appⁿ to set aside ex-parte decree (O. 9 R. 13)
- 2) Appeal
- 3) Revision
- 4) Revision
- 5) Suit

Order X

Examination of Parties by Court

Rule 1

Ascertainment whether allegations in pleadings are admitted or denied.

- On first day of hearing
 - ↳ Court to ascertain whether defendant admits/denies alleged
 - ↳ Expressly or impliedly
 - ↳ & record the same

Direct parties for ADR u/s. 89 of CPC. [R. 1A]

Parties shall appear before such conciliatory forum or authority. [R. 1B]

- * Procedure at first hearing. Court may
- 1) - Orally examine party present before court.
 - 2) - may orally examine any person able to answer any material question.
 - 3) - also at any subsequent hearing court may examine any party.
 - 4) - Court may put in course of examination any question suggested by either party.

→ Such substance of such examination shall be reduced into writing by Judge.

Relief

If any party refuses to answer or inability of pleader to answer. Court may postpone hearing.

If such party fail to appear on subsequent hearing, Court may pass order or pronounce judgment against them.

Order XIII

Production, Impounding & Return of documents.

General rule

Rule 1 :- Original documents to be produced at or before settlement of issues. (Plaint & W.S.)

Court shall receive such documents.

Excepts :- 1) for cross examination 2) to refresh memory.

Rule 2 - Court may eject any doc. which it considers

- 1) Irrelevant or
- 2) Inadmissible

→ Must record reason for the same

⑥ * Admission of Documents

rule 4

Endorsement of documents admitted (Exhibit)

In case of entry in book, account or record, copy of the same will do.

rule 6

Endorsement on document rejected, as inadmissible in evidence

Write Rejected with sign of judge, with

- a) name & title of suit
- b) name of person producing it
- c) date of production

rule 7

Admitted documents shall form part of record.

Rejected documents shall be returned to that person

⑦ * Impounding of documents (Rule 8)

Impound means to keep in custody of law. (legal possession)

Court may for sufficient reason direct any book, document or exhibit produced before it in any suit to be impounded.

It is doc. admitted in evidence

for any period which court thinks fit.

⑧ Return of documents (R. 7, 9)

doc. not admitted in evidence shall be returned

It provides when such person entitled to get that doc.

1) suit is dismissed & no appeal provided

2) ~~See~~ when appeal period has been elapsed

3) Appeal preferred but it has been disposed of.

It also provide for return of doc. during pendency of suit.

1) If certified copy is given

2) orig. Ordinary copy examined, compared and certified

3) undertakes to produce original doc. when required.

(d)* Rejection of documents (Rule 3, 6)

Order 19
Affidavits (2142142)

(I) Meaning - not defined in code
Refect - a sworn statement in writing made especially under oath or on affirmation before an authorized officer or Magistrate

(II) Essentials of Affidavit

- (a) It must be declaration made by person (drawn in first person)
- (b) It must contain only facts.
- (c) It must be in writing.
- (d) It must be sworn before / affirmed before a Mag or authorized person
- (e) It should be verified.

(III) Rule 1 :- Court can order any point to be proved by affidavit
- Exemption to general rule 'a fact has to be proved by oral evidence'

Rule 2 - Deponent shall be available for cross when required
- Affidavit in reply (to attend cross)

Rule 3 - Affidavits shall confine to such facts
→ Deponent is able of his own knowledge to prove
Except :- Interrogatory Applications

Order 17

Adjournments

General rule - When hearing of evidence has once begun, such hearing shall be continued day to day & the adjournment should be granted only for unavoidable circumstances

Rule 1
Court can grant adjournment at any stage of suit
may adjourn from time to time adjourn for reasons

→ Reasons to be recorded in writing

→ Maximum adjournment - 3 (1999 Amend.)

Salem Advocates Bar Association v. U.O. I. (2005)

→ In exceptional case of max. adj. does not apply

* Adjournment granted.

1) Sickness of party, counsel 2) Non-service of summons.

3) Reasonable time for prep. of case 4) Inability of counsel to attend.

* Adjournment refused.

1) Engagement of counsel in another court 2) Strike by lawyers.

3) First matter on board.

* Costs for adjournment

- while granting adjournment

- Court shall make order as to costs

Rule 2 If parties fail to appear on day fixed (after adjournment)

- Court may proceed to dismiss the suit

- as per Order 9.

- Judgment in default

- Grants discretion to court

Rule 3 Power of court to proceed with case

where any party to whom time has been granted fails

i) to produce his evidence.

ii) to cause attendance of witness.

iii) to perform any other act necc. for progress of suit

If parties

Present

Proceed with suit

Absent

Proceed under rule 2