

SUBJECT: PLEADING, DRAFTING AND CONVEYANCING

E-CONTENT/ONLINE STUDY MATERIAL FOR THE YEAR 2020.

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UNIT I: FUNDAMENTAL RULES OF PLEADING

1.1 INTRODUCTION:

Pleading is an art, of course, and art which requires not only technical and linguistic skill but also an expert knowledge of the law on the given point brought before a lawyer. Even experienced lawyers and attorneys are not infallible and sometimes they also make mistakes. However, in the matter of pleadings longer experience and a great linguistic acumen are both essential ingredients. What ultimately matters is how clearly and systematically have the facts been presented before the court of law.

“Pleadings, Drafting, and Conveyancing” (PDC) has been made a compulsory practical subject study forming part of the curriculum of the Law Course in India. It envisages, inter alia, drafting of Civil Pleadings; Criminal complaints and other proceeding; Writ Petition, Appeal-Civil, Criminal and Writ; Revisions-Civil and Criminal, Reviews, Writ Appeals-Civil and Criminal, and also Special Leave Petition; Contempt Petition, Interlocutory Applications, etc. A student who acquires the requisite knowledge, perfection and proficiency in drafting of these matters, shall undoubtedly become a perfect legal professional. He will be an asset in the legal world.

It is a matter of common knowledge that when a person comes to seek the assistance of the court of law in any matter, he has to prepare a statement of his claims, and the facts on which such claims are founded. Such statements fully drawn up, setting out all contentions, are called “pleadings”. Thus pleadings are the foundation of all sorts of litigation; no judicial system in the world can do justice in any matter unless and until the court of justice is fully aware as to the claims and contentions of the plaintiff and of the counter claims and defences of the defendant.

The present day system of pleadings in our country is based on the provisions of the Civil Procedure Code, 1908 supplemented from time to time by rules in that behalf by High Courts of the States. There are rules of the Supreme Court and rules by special enactments as well. **Order 6, R. 1 of Civil Procedure Code (C.P.C.)** defines 'pleading'. It means either a "Plaint" or "a written statement". **Plaint** is the statement of a claim, in writing and filed by the plaintiff in which he sets out his cause of action with all necessary particulars. **Written statement** is the statement of defence in writing and filed by the defendant in whom he deals with every material fact alleged by the plaintiff in the plaint and also states any new facts which may be in his favour adding such legal objections as he wishes to take to the claim.

Various jurists have defined Pleadings as, *"The formal allegations by the parties of their respective claims and defences for the judgement of the court"*. Pleadings are the backbone of legal profession. It is the foundation stone on which case of a party stands.

1.2 PLEADING, DRAFTING AND CONVEYANCING EXPLAINED:

- 1. Pleading:** Pleading is in written form that is filed by each party of a case before court. Pleading is a specified document that contains either claim of the one party or counter claims of other party with each other in a case. This case may be civil or criminal. All the details (facts) which the opponent (each) party of the case needs to know is given through pleading. In other words, pleading can be defined as a formal statement that requests the court to either grant a relief or pass a verdict in a dispute. The plaintiff initiates a lawsuit by filing a plaint, while the defendant will file written statement as an answer/defense to the claims of the plaintiff. Thus, pleadings are the first documents that the parties file before the court and it may also be filed in response to the claims of opponent party. For example, pleading may be plaint (in civil case), complaints (in criminal case), written statement, or replication (reply of written statement). In totality, other documents are also added often as the trial continues.

For instance, two kids A and B are fighting and A complains to his teacher that B hit's A and injured him. Everything that A tells to his teacher as to where was the

fight, at what time, for what reason, etc. amounts to A's pleadings. Further, when B is called to justify his actions, everything that B says in his defence and/or puts any allegations or counterclaims against B are A's pleadings.

2. **Drafting:** Drafting is a writing skill for preparing a legal document. In other words, drafting is writing for which legal skill is required. It can be made for the purpose of writing Legislative Acts, Ordinance, Deeds, Instruments, Affidavit, Complaint, Written Statement, Petition, etc. A good drafting is said to be complete if it contains all necessary information. All essential facts should be provided with clarity, each paragraph should contain one idea, all facts should be presented in the best and suitable manner, the true meaning of the writer should be conveyed to the reader by choosing right words at the right place. Simplest words should be used that make a sentence clear.
3. **Conveyancing:** It is an art of the alienation of property by means of appropriate instrument. The art may be for drafting, and framing of legal and technical documents. Alienation may be transfer of right or title or any interest of property. Property may be movable or immovable or intangible property. Instrument means any document by which any right or liability is created/transferred/limited/extended/recorded/extinguished. Sale deed, mortgage deed, gift deed, lease deed, promissory note, etc. are the result of 'Conveyancing'.

1.3 OBJECT OF PLEADINGS:

The object of pleadings is to assist the Court and the parties to the dispute in its adjudication. Its function is of multi-dimension, and is in various ways. **Stable J., in Pinston v. Loyds Bank Ltd., (1941) 2 K.B. 72**, has expressed the object of pleading in the following words: "The function of a pleading is not simply for the benefit of the parties but also and perhaps primarily for the assistance of a Court by defining with precision the area beyond which without the leave of the court, and consequential amendment of pleading, conflict must not be allowed to extend".

Following are the objects of pleading:

1. The whole object of pleading is to give a fair notice to each party of what the opponent's case is.
2. Pleadings bring forth the real matters in dispute between the parties. It is necessary for the parties to know each other's stand, what facts are admitted and what denied, so that at the trial they are prepared to meet them.
3. Pleadings also eliminate the element of surprise during the trial, besides eradicating irrelevant matters which are admitted to be true. The facts admitted by any parties need not be pursued or proved. Thus the pleadings save the parties much bother, expense and trouble of adducing evidence in support of matters already admitted by a party, and they can concentrate their evidence to the issue framed by the Court in the light of the facts alleged by one party and denied by the other.
4. Another advantage of the pleadings is that the parties come to know beforehand what points the opposite party will raise at the trial, and thus they are a prepared to meet them and are not taken by surprise, which would certainly be the case if there were no obligatory rules of pleadings.....***Throp v. Holdsworth, 1876, 3 Ch D 637.***

In Prakash chand v. Comm & Secy of Govt of India, 1986, the court held that “Truly speaking the object of the pleading is to narrow down the controversy of the parties to definite issue. The sole object of pleadings is that each side may be fully active to the question that are about to be argued in order that they may have an opportunity of bringing forward such evidence as may be appropriate to the issues. The Court has no power to disregard the pleading and reach conclusions that they think are just and proper”.

1.4 FUNDAMENTAL RULES OF PLEADINGS:

Order 6 of the Code of Civil Procedure, 1908 deals with pleadings in general. Rule 1 defines pleading, while Rule 2 lays down the fundamental principles of pleadings. Rules 3 to 13 require the parties to supply necessary particulars. Rules 14 and 15 provide for signing and verification of pleadings. Rule 16 empowers a Court to strike out unnecessary pleadings. Rules 17 and 18 contain provisions relating to amendment of pleadings.

To gain a crystal clear understanding of the same, the rules can be studied in two parts that is:

- (a) ***Basic or Fundamental Rules;***
- (b) ***Particulars or other rules.***

(a) **Basic or Fundamental Rules** are discussed in the sub-rule (1) of Rule 2 of Order VI of the Code of Civil Procedure, 1908. Summarising the provision, the basic rules of pleadings are the following:

1. ***Facts should be pleaded upon and not the law:*** The four words which can crisply summaries this rule of pleading is 'Plead facts not law'. The counsel of both the parties should only project the facts in their respective case rather than suggesting on the laws applicable in the particular case. This was first held in the case **Kedar Lal v. Hari Lal** where it was held that the parties are under the duty to state the facts on which they are claiming their compensation. The court shall apply the law as per the stated facts to render the judgement. One should not assert or apply any laws for claiming right on the stated facts.
2. ***Material facts should be pleaded:*** The second basic rule is to present facts which are material only. Immaterial facts shall not be considered. The question arose in the court of law that what is the actual scope of 'material facts'. It was decided by the judge in the case **Union of India v. Sita Ram** that material facts will be inclusive of all those facts upon which the plaintiff's counsel will claim damages or rights as the case may be or the defendant will put forth his defence. In nutshell, facts which will form the basis for claiming a right or compensation by the plaintiff or prove the defendant's defence in the written statement will fall under the ambit of being 'material'.
3. ***Evidence should not be included while pleading:*** It says that pleadings should contain a statement of material facts on which the party relies but not the evidence by which those facts are to be proved. There are two types of facts:
 - *Facts probanda : the facts which need to be proved, i.e material facts*
 - *Facts probantia: facts by which a case is to be proved, i.e evidence*

Only facts probanda should form the part of pleadings and not facts probantia. The material facts on which the plaintiff relies for his claim or the defendant relies for his defence are called facta probanda, and they must be stated in the plaint or in the written statement, as the case may be.

4. ***Facts in concise manner should be presented:*** This is the last and final basic rule of pleadings. Compressed and crisp presentation must be adhered while presenting the pleadings. At the same time it must be kept in mind that in order to maintain brevity of facts one should not miss out on important facts in the pleadings. Pleadings can be saved from superfluity if one takes care in syntax.

(b) Particulars or other rules: They are:

1. Particulars with dates and items should be stated wherever fraud, misrepresentation, breach of trust, undue influence or wilful default are pleaded in the pleadings.
2. Generally departure from pleading is not permissible, and except by way of amendment, no party can raise any ground of claim or contain any allegation of fact inconsistent with his previous pleadings.
3. Non-performance of a condition precedent should be specifically mentioned in the pleadings. Performance of the same shall not form a part of the pleadings since it is already implied.
4. If the opposite party denies a contract, it will be held as denial of the facts of the contract and not its validity, enforceability and legality.
5. Wherever malice, fraudulent intention, knowledge or other condition of the mind of a person is material, it may be alleged in the pleading only as a fact without setting out the circumstances from which it is to be inferred.
6. Unless the facts are material, there is no need for the facts to be stated in verbatim.
7. Pleadings should only state the giving of a notice, when it is required to give a notice or condition precedent, without disclosing the form or manner of such

- notice or giving details of any circumstances from which the form of notice can be determined, unless the same is material.
- 8.** Implied relations between persons or contracts can be alleged as facts and the series of conversations, letters and the circumstances from which they are to be inferred should be pleaded generally.
 - 9.** The facts which deals with onus of proof or which favours a party shall not be pleaded.
 - 10.** Every pleading should be signed by the party or one of the parties or by his pleader.
 - 11.** A party to the suit shall provide with his and the opposite party's address.
 - 12.** Each and every pleading need to be approved by making an affidavit by the party or a person who is acquainted by the facts stated in the pleading.
 - 13.** A pleading may be ordered to be strike out by a court of law, if it feels the same is scandalous, frivolous, unnecessary or intended towards embarrassing, prejudicing or delaying a fair trial in the court.

14. Amendment of Pleadings:

Amendment is the formal revision or addition or alteration or modification of the pleadings. Provisions for the amendment of pleadings are intended for promoting the ends of justice and not for defeating them. Rules 17 and 18 of Order VI of Code of Civil Procedure, 1908 deals with provisions regarding amendment of pleadings and failure to amend after order respectively.

Rule 17 of the Code of Civil Procedure, 1908 provides that, "The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Proviso to the Rule 17 of Order VI of Code of Civil Procedure, 1908 as inserted by the Code of Civil Procedure (Amendment) Act, 2002 restricts and curtails power of the Court to allow amendment in pleadings by enacting that no application for amendment should be allowed after the trial has commenced, unless the Court

comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Amendment of pleadings when granted: Amendment of pleadings can be granted by the Court in two situations namely, (i) where the amendment is necessary for the determination of the real question in controversy; and (ii) can the amendment be allowed without injustice to the other side.

Amendment of pleadings when refused:- Amendment of pleadings can be refused in many circumstances. Following are the situations or circumstances when amendment of pleadings can be refused by the Court:

- (1) When the proposed amendment is unnecessary;
- (2) When the proposed amendment causes an injury to the opposite party which cannot be compensated for by costs;
- (3) When the proposed amendment changes the nature of the case;
- (4) When the application for amendment is not made in good faith;
- (5) When there has been an excessive delay in filing the amendment application.

Rule 18 of Order VI of Code of Civil Procedure, 1908 - Failure to amend: It deals with this issue. It provides that if a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within 14 days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such 14 days, as the case may be, unless the time is extended by the Court.

15. The pleadings shall be divided in proper paragraphs whenever required, consecutively numbered and structured properly. Every argument or allegations must be in separate paragraphs. Dates, sums and any totals shall be expressed in figures as well as in words so as to maintain clarity for the judge as well as the parties concerned in the trial.

16. Forms in Appendix A of the Code should be used wherever they are applicable. Where they are not applicable, forms of like nature should be used.

1.5 PLAINT STRUCTURE

A suit is instituted by filing a plaint, which is the first pleading in a civil suit. It is a statement of the plaintiff's claim and its object is simply to state the grounds upon, and the relief in respect of which he seeks the assistance of the court.

Order VII of the Civil Procedure Code, 1908 deals with plaint. As per **Order VII, R.1 CPC**, every plaint must contain the following things:

- 1) The name of the Court in which the suit is brought;
- 2) The name, description and place of residence of the plaintiff;
- 3) The name, description and place of residence of the defendant, so far as they can be ascertained;
- 4) Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect; (e) the facts constituting the cause of action and when it arose;
- 5) The facts showing that the Court has jurisdiction;
- 6) The relief which the plaintiff claims;
- 7) Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- 8) A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

Order VII, Rule 2: According to this rule where the plaintiff seeks the recovery of money, the plaint must state the precise amount claimed. But where the plaintiff sue for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for.

Order VII, Rule 3: If the subject-matter of the suit is immovable property, the plaint must contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint must specify such boundaries or numbers.

Order VII, Rule 4: As per Rule 4 the plaintiff sues in a representative character the plaintiff shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

Order VII, Rule 5: The plaintiff must show that the defendant is or claims to be interested in subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Order VII, Rule 6: In case the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff must show the ground upon which exemption from such law is claimed. The Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaintiff's statement, if such ground is not inconsistent with the grounds set out in the plaintiff's statement.

Order VII, Rule 7: According to Rule 7 every plaintiff shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

Order VII, Rule 8: If the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly.