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## PLACE OF SUING (SECTION 15 TO 20)

The first and the important thing is the place of suing in order that a Court can entertain, deal with and decide a suit. Section 15 to 20 of C.P.C. regulate the forum for the institution of suits.

### Rules as to forum

The rules as to forum can be discussed under the following two heads-

- a. **Rules as to pecuniary jurisdiction:** The rule about the pecuniary jurisdiction is that the "Every suit shall be instituted in the court of the lowest grade competent to try it."<sup>37</sup>

The above rule is one of procedure only and not of jurisdiction and therefore, exercise of jurisdiction by a Court of higher grade than is competent to try the suit is mere irregularity covered by section 99 and the decree passed by the Court is not nullity while the exercise of jurisdiction by a Court of lower grade than the one which is competent to try it, is a nullity as being without jurisdiction.

- b. **Rules as to nature of the suit:** Suits may be divided into three classes-

- i. Suits in respect of immoveable property,- section 16 to 18
- ii. Suit for compensation for wrong (for torts) to person or movable property,- Section 19, and
- iii. Suits of other kinds, - section- 20.

- 1) **Suits in respect of immoveable property:** Sections 16 to 18 deal with suits relating to immoveable property.

**Suits to be instituted where subject-matter situate**<sup>38</sup>: Section 16 provides as Subject to the pecuniary or other limitations prescribed by any law, suits for the recovery of immoveable property with or without rent or profits-

- a. for the partition of immoveable property;
- b. for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property;
- c. for the determination of any other right to or interest in immoveable property;
- d. for compensation for wrong to immoveable property,
- e. for the recovery of immoveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by

or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

**Explanation:** In this section "property" means property situate in India.

**Suits for immoveable property situate within jurisdiction of different<sup>39</sup> courts:** Section 17 provides as

"Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situated within the jurisdiction of different Courts, the suits may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court.

**Place of institution of suit where local limits of jurisdiction of Courts are uncertain<sup>40</sup>: Section 18** provides as

1. Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, anyone of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction.

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suits to exercise jurisdiction.<sup>41</sup>

2. Where a statement has not been recorded U/s 18(1), and the objection is taken before an Appellate Court or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate Court or Revisional Court shall not allow the objection unless in its opinion there was, at the time of institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.<sup>42</sup>

- 2) Suit for compensation for wrong to person or movable<sup>43</sup> property: Section 19 provides as Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said courts.

**Illustrations:**

- a. A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.
- b. A, residing in Delhi, publishes in Calcutta statements defamatory of B, B may sue A either in Calcutta or in Delhi.

3. **Suits for other kinds<sup>44</sup>:** Section 20 provides as

Subject, to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

- a. the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, or
- b. any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gains, provided that in such case either the leave of the Court is given, or the defendant who does not reside, or carry on business, or personally work for gain, as aforesaid, acquiesces in such institution; or
- c. the cause of action, wholly or in part, arises.

**Explanation:** A corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

**Illustration:**

- 1) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East India Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen or in Delhi, where B carries on business.
- 2) A resides at Shimla, B at Calcutta and C at Delhi. A, B and C being together at Banaras, B and C make a joint Promissory note payable on demand, and deliver it to A. A may sue B and C at Banaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit can not proceed without the leave of the Court.

**Objections to Jurisdiction - Section 21**

**Objections as to territorial (Place of suing) jurisdiction<sup>45</sup>:** "No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless -

- a. Such objection was taken in the Court of first instance.
- b. at the earliest possible opportunity and in all cases where issues are settled at or before such settlement,
- c. and unless there has been consequent failure of justice".

All these three conditions must co-exist.<sup>46</sup>

**Objections as to pecuniary jurisdiction<sup>47</sup>:** "No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court less-

- 1) such objection was taken in the Court of first instance,
- 2) at the earliest possible opportunity and in all cases where issues are settled at or before such settlement,
- 3) and unless there has been a consequent failure of Justice."

All these three conditions must co-exist.<sup>48</sup>

**Objections in execution proceedings<sup>49</sup>:** "No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction" shall be allowed by any Appellate or Revisional Court unless-

- a. such objection was taken in the executing Court,
- b. at the earliest possible opportunity,
- c. and unless there has been a consequent failure of Justice."

**Lack of jurisdiction and Waiver of defect as to place of suing:** It is well settled principle of law that neither consent nor waiver nor acquiescence can confer jurisdiction upon a Court otherwise incompetent to try a suit.

An objection as to local jurisdiction of a Court can be waived and this principle has been given a statutory recognition in Section 21 of the Code of Civil procedure<sup>50</sup> and provides that the defect as to the place of suing under 15 to 20 may be waived.

Objections as to jurisdiction both territorial, pecuniary and technical are not open to consideration by an Appellate Court unless there has been prejudice on merits<sup>51</sup> and the section does not preclude objections as to the place of suing being taken in the Appellate Court or Revisional Court, if the trial Court has not decided the suit on merits.

The mere lack of territorial or pecuniary jurisdiction is considered as merely technical and it can be waived in the sense that if objection with regards to them is not taken at the earliest opportunity, at any stage, at or before the settlement of issues, the same cannot be allowed to be raised at a later stage unless it is established that there is a consequent failure of Justice.<sup>52</sup>

It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity and that invalidity could be set up wherever it is sought to be enforced or relied upon even at the stage of execution. The defect of jurisdiction whether it is pecuniary or territorial or whether it is in respect of the subject matter of the action strikes at the very authority of the Court to pass any decree and such defect cannot be cured even by consent of parties.<sup>53</sup>

Section 21 is an exception and defect as to place of suing, that is to say, the local venue for suits cognizable by Courts under the Code may be waived under this section. Such waiver is limited to objections in the Appellate or Revisional Courts.<sup>54</sup>

### **Bar of Fresh Suit - Section -21-A**

**Bar on suit to set-aside decree on objection as to place of suing:** No suit shall lie challenging the



6. Vasudev Modi Vs R. Rehman AIR 1970, S.C
7. Ibid'
8. Kiran Sing V Chaman Paswan AIR 1954 SC
9. Lord Hobhouse
10. Mathai Vs Varkey Varkey A.I.R., 1964 S.C
11. Bhatia Coop. Housing Society V D.C. Patel, AIR 1953 SC
12. Abdulla Vs Golappa, AIR 1985 S.C.
13. Abdul Wahid Khan Vs Bhawani, AIR 1966 S.C.
14. Ubi jus ibi remidium
15. Oxford English Dictionary
16. P.M.A. Metropolitan V M.M. Marthoma, AIR 1995 SC
17. Section 9
18. Umrao Singh V Bhagwan Singh, AIR 1956 SC
19. Abdul V Bhawani AIR 1966 SC
20. Bhatia Coop. Housing Society V D. C. Patel, AIR 1953 SC
21. Premier Automobiles V K. S. Wadke, AIR 1975 SC
22. National Institute of Mental Health & Neuro Science V Parameshwara 2004 AIOC Com:
23. Explanation to Section 10
24. Spencer Bower
25. Das Gupta, J. in Satyadhyan Ghosal V Deorajin Debi AIR 1960 SC
26. Supra Note 4
27. From C. K. Tackwani
28. Sayyadhan v. Deorajin Dabi AIR 1960 SC
29. Y. B. Patil v Y. L. Patil, (1976) 4 SCC 66, See also Prahlad Singh v Shukhdev Singh, (1987) 1 SCC 727
30. Bhanu Kumar Jain v Archana Kumar (SC) 2005 (1) AWC
31. Daryao Singh v State of U.P. AIR 1961 SC
32. See also State of U.P. v. Nawab Hussain AIR 1977 SC
33. Gautam Sarwar v. Union of India AIR 1967 SC.
34. Chengalvaraya Naidu V Jagannath, AIR 1994 SC, see also Satya V. Teja Singh AIR 1975 SC, Narsimha Rao V. Venkata Lakshmi (1991) 3 SCC.
35. Satya V Teja Singh AIR 1975 SC 36.
36. Article 101, Limitation Act, 1963 7.
37. Section 15
38. Section' 16
39. Section 17
40. Section 18

41. Section 18 (1)
42. Section 18(2)
43. Section 1944.
44. Section 20
45. Section 21 (1)
46. Pathumma V Kuntalan Kutty (1981) 2 SCC 589, Hindustan Sugar Mills Vs State of Rajasthan AIR 1981 SC 1683
47. Section 21(2)
48. Supra Note 2
49. Section 21 (3)
50. AIR 1982 Kant. 77, AIR 1966 SC 634
51. Kiran Singh V Chaman Paswan, AIR 1954, SC 340
52. Krishnappa M. R. V Bhagyalaxmamma AIR 1982 Kant. 77
53. Jagdish Vs Smt. Prem Lata 1999(2) Civil LJ 266 Raj. (AIR 1954, S C 340 Relied on)
54. Behrin Petroleum Co. Ltd. Vs P. J. Pappu & Another, (1967) S C J 49; AIR 1966 S C 634



all or any of the persons severally, or jointly and severally, liable on anyone contract, including parties to bills of exchange, hundis and promissory notes.

**When plaintiff in doubt from whom redress is to be sought<sup>2</sup>:** Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

**Separate trial<sup>3</sup>:** Where it appears to the Court that any joinder of plaintiffs or defendants may embarrass delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient in the interest of justice.

**Judgment for or against one or more of joint parties:** The Court may give judgment for one or more the plaintiffs as may be found to entitle to relief<sup>4</sup> or as against one or more of the defendants as may found to be liable.<sup>5</sup>

**Necessary and Proper Parties:** A necessary party is one whose presence is indispensable to the constitution of the suit, against whom the relief is sought and without whom no effective order can be made. In the absence of a necessary party no decree can be passed, while a proper party is one in whose absence an effective order can be made, but whose presence is required for a complete and final decision on the question involved in the proceeding. In the absence of a proper party a decree can be passed so far as it relates to the parties to the suit.

**Example:** In a petition for compensation in a road accident case, the claimant(s) may join three parties i.e. owner(s) of the vehicle(s) involved in the accident, the insurer(s) of the vehicle(s) and the driver(s) of the vehicle as respondents. The owner(s) and insurer(s), if any, are the necessary parties along with the claimant(s), while the driver(s) of the vehicle(s) involved is/are the formal/proper party whose presence enables the Court to adjudicate more "effectually and completely" but even in his absence the Court can pass a decree.

**Non Joinder or misjoinder of parties<sup>6</sup>:** Non joinder means not joining proper or necessary parties to the suits, while mis-joinder is a state of joining two or more persons (whether necessary or proper parties) as plaintiffs or defendants on one suit in contravention of rules 1 and rule 3 respectively. As a general rule, a suit shall not be dismissed only on the ground of non-joinder or mis-joinder of parties, except in a case of non-joinder of a necessary party.

**Objections as to non joinder or misjoinder of parties:** As has been provided in Rule 13 of Order I, all objections on the grounds of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity and, in all cases in which issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

**Suit in the Name of Wrong parties<sup>7</sup>:** Order I, Rule 10 deals with the cases of striking out, addition or substitution of parties.

**Addition or substitution of plaintiff<sup>8</sup>:** In a case where a suit has been instituted in the name of wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, on the satisfaction of the following:

- i) that the suit has been instituted through a bona fide mistake, and
- ii) that it is necessary for the determination of the real matters in disputed, order any other person to be added or substituted as plaintiff upon such terms as the Court may think just.

**Court may strike out or add parties:** The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order at the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.<sup>9</sup>

No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent, i.e., no person can be added as a plaintiff without his consent.

On the addition of a defendant, the plaint shall unless the Court otherwise directs be amended and amended copies of the plaint shall be served on the new defendant and if required, on the original defendant.<sup>10</sup> All proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.<sup>11</sup>

### **Representative Suit: (Order I, Rule 8)**

**Introduction:** Order VIII, Rule 1 is an exception to the general rule that all persons interested in a suit ought to be joined as parties to it, in order to finally adjudicate all the matters involved therein and to avoid the fresh litigations over the same matters.

The rule is an enabling provision and neither compels anyone to represent many if, by himself, he has a right to sue nor vest a right of suit in a person and if he, by himself, has no right to sue, he cannot proceed to sue on behalf of others by invoking the aid of Order 1 Rule 8 C.P.C.

**Meaning:** Representative Suit may be defined as under "A representative suit is a suit filed by or against one or more persons on behalf of themselves and others having the same interest in the suit."

### **Who may sue or defend in Representative Capacity<sup>12</sup>:**

- 1) Where there are numerous persons having the same interests in one suit
  - a. One or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;
  - b. the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.
- 2) The Court shall, in every case where a permission or direction is given under Sub-rule (1), at the plaintiff expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of number of persons or any other cause, such service is not reasonably

practicable, by public advertisement, as the Court in each case may direct.

- 3) Any person on whose behalf, or for whose benefit, a suit is instituted or defended, under Sub-rule (1), may apply to the Court to be made a party to such suit.
- 4) No part of the claim in any such suit shall be abandoned under Sub- rule (1) and no such suit shall be withdrawn under Sub- rule (3) of Rule (1) of Order XXIII, Le. Order 23, Rule 1 (3), and no agreement, compromise or satisfaction shall be recorded in any such suit under Rule (3) of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).
- 5) Where any person suing or defending in any suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.
- 6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

**Explanation:** For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the" persons on whose behalf, or for whose benefit, they sue or are sued or defend the suit, as the case may be.

**Conditions to Apply Rule 8 :** The Apex Court has decided in **T. N. Housing Board v. Ganapathy, AIR 1990 SC** that for the application of Rule 8 the following conditions must be fulfilled:-

- a. the parties must be numerous; Rule 8(1)
- b. they must have the same interest in the suit; Rule 8(1)
- c. the permission must have been granted [Rule 8(1) (a)] or direction must have been given by the Court [Rule 8(1) (b)]; and
- d. notice must have been issued to the parties whom it is proposed to represent in the suit. Rule 8(2)

**1) Numerous persons:** The word " numerous" means a group of persons. It is not necessary that the number of persons should be capable of being ascertained. But it is necessary that the body of persons represented by the plaintiffs or the defendants must be sufficiently definite so as to enable the Court to recognize as participants in the suit.

**2) Same Interest:** The persons on whose behalf the suit is instituted must have the same interest which is common to all of them or they must have a common grievance which they seek to get redressed.

For the purpose of this condition the above explanation to Rule 1 is relevant.

3) Permission or direction by the Court<sup>13</sup>

**4) Notice 14:** The fact about the representative nature of the suit must be stated in the body of the

plaint as well as in the file of the suit. In a representative suit, even on the death of the person appointed to conduct such suit, such suit will not abate and other person or persons interested in the suits may proceed with the suit or may apply to be added as plaintiff.

## **FRAME OF SUIT (ORDER II)**

**Introduction:** Order II of the code deals with the provisions relating to the framing of suits and the rules regarding causes of action. A cause of Action means every fact which it is necessary for the plaintiff to establish to support his claim in obtaining judgment in his favour. Order II, Rule 1 explains that every suit shall be framed so as to afford ground for the final decision upon the subject in disputes and to prevent further litigation concerning them.

**Suit to include the whole claim:** Rule 2 of order II is based upon the principle that a defendant should not be vexed twice for the same cause of action. Sub-rule 2 of rule 20 of Order II provides that every suit shall include the whole claim in respect of a cause of action.

**Relinquishment of claim:** But a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of the Court<sup>15</sup> and where a person is entitled to more than one relief in respect of the same cause of action, then he may sue for all or any of such relief.<sup>16</sup>

**Effect of Relinquishment: Omission to sue:** Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished<sup>17</sup> and if he omits to sue for all such relief with respect to the same cause of action except with the leave of the Court, he shall not afterwards sue for any relief so omitted.

**For example:** A lets a house to B at a yearly rent of Rs. 1,200/- The rent for the whole of the years 1905, 1906, and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 and 1906.

The provisions of order II, Rule 2 apply only to suits and not to appeals, execution proceedings, and arbitration proceedings or to a petition under Art. 226.

**Joinder of Cause of Action<sup>18</sup>:** Subject to the provisions of Rules 4 and 5 of order II and rule 3 of order I, Rules 1 and 3 of Order II provide the provision for joinder of several causes of action in one suit. Rule 3 contemplates the under mentioned four types of situations:

- 1) One plaintiff, one defendant -and several causes of action:** In this condition the plaintiff is at liberty to unite several causes of action in one suit.
- 2) Joinder of Plaintiffs and Causes of Action (two or more plaintiffs and same defendant):** In this condition, subject to Order I, rule 1, the plaintiffs may unite such causes of action in one suit against the same defendant if they all are jointly interested.
- 3) Joinder of defendants and Causes of Action (One plaintiff and two or more defendants) :** In this condition, subject to rule 3 of order I, the plaintiff may unite in the same suit several causes of action against those defendants, if the defendants are jointly interested in the causes of action.
- 4) Joinder of plaintiffs, defendants and causes of Action (Two or more plaintiffs and two or more**

**defendants):** In this condition, subject to rules 1 and 3 of order I the plaintiffs may unite the causes of action against the defendants in the same suit only when all the plaintiffs and all the defendant~ are jointly interested in the causes of actions.

### **Conditions of mis-joinder:**

- 1) Mis-joinder of plaintiffs and causes of action: Where plaintiffs are not jointly interested in the causes of action and the suit is bad for mis-joinder of plaintiffs and causes of action.
- 2) **Multifariousness:** Where defendants are not jointly interested in the causes of action, the suit is bad for Multifariousness.
- 3) **Double mis joinder:** Where neither the plaintiffs nor the defendants are jointly interested in the cause of action i.e., mis joinder of plaintiffs and causes of action and mis joinder of defendants and causes of action.

**Objections as to misjoinders**<sup>19</sup>: All objections on the ground of mis-joinder of causes of actions shall be between at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not s taken shall be deemed to have been waived.

**Separate tria**<sup>10</sup>: Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other orders as may be expedient in the interests of justice.

### **PLEADING (ORDER VI)**

**Meaning:** According to order VI Rule 1, pleading shall mean plaint or written statement.

"Pleadings are statements in writing drawn up and filled by each party to a case, stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer."<sup>21</sup>

In proceedings before a Civil Court pleading may include a petition and reply thereto by the respondent whether to the form of an affidavit or otherwise. Plaintiff's pleading is called a plaint while the defendant's pleading is called a Written Statement

**Object:** The object of pleading is to bring parties to definite issues and to diminish expense and delay and to prevent surprise at the hearing.

"The object of the rule is twofold. First is to afford the other side intimation regarding the particular facts of his case so that they may be met by the other side. Second is to enable the Court to determine what is really the issue between the parties."<sup>22</sup>

"Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must lie."<sup>23</sup>

The entire law governing the "Pleading" is contained in the provisions of Order VI (Pleading), Order VII (Plaint) and Order VIII (Written Statement) of the Code. Apart from this some important fundamental procedural matters relating to the practice are the provisions of Order I (Parties to suit), as to the manner in which a suit should be framed Order II (Frame of suit), as to who should sign the pleading Order III and Order IV (Institution of suit) and as to taking out of summons and their services Order V.

**Fundamental Rules of Pleading:** The general rule regarding the pleadings is as under:

- 1) Pleading must state facts and not law;
- 2) Only the material facts must be stated;
- 3) Pleading should not include the evidence, and
- 4) The facts stated must be in concise form.

**Material Facts:** The facts are of two types:

- 1) Facts probanda: the facts required to be proved (material facts); and
- 2) Facts probantia: the facts by means of which they are to be proved (particulars or evidence).

It is the fundamental rule of pleading that pleadings must include the material facts and not the facts by means of which they are to be proved i.e., evidence. The term material facts has not been defined in the code, but the expression "material facts" has been defined by the Hon'ble S.C. in **Udhav Singh V/s Madhav Rao Scinda** AIR 1977 that "all the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence are material facts."

It means all facts upon which the plaintiffs cause of action or the defendant's defence depends, or all those facts which must be proved in order to establish the plaintiff's right to relief claimed in the plaint or the defendant defence.<sup>24</sup>

**Striking out Pleading:** (Rule 16) If the pleading is unnecessary, scandalous, frivolous; or vexatious<sup>25</sup> or tends to prejudice, embarrass or delay the fair trial of the suits or is otherwise an abuse of the process of the Court<sup>27</sup> the Court may, at any stage of the proceedings, order to be struck out or amended any matter in it.

**Signing (Rule 14) and Verification Rule (15) of Pleadings:** Every pleading shall be signed by the party and his pleaders (if any) or by any person duly authorized to sign the same or to sue or defend on his behalf<sup>28</sup> and every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.<sup>29</sup> The person verifying shall specify what he verifies to his own knowledge and what upon information received he believes to be true.<sup>30</sup> The person verifying shall furnish an affidavit in support of his pleading<sup>31</sup> and the verification shall be signed with date and place at which it was signed,<sup>32</sup>

### **Amendment of Pleading (Order VI, Rule 17)**

As a general rule, material facts and necessary particulars must be stated in the pleadings and the decision cannot be based on the grounds outside the pleadings. But due to various reasons parties have to amend their pleadings for which Order VI rule 17 states as under:

"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 question in controversy between the parties,

Provided that no application for amendment shall 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"

In order to try a case on its merits and for determining the real question in controversy between the parties the Courts are empowered under 'rule 17 to allow the amendment of the pleadings. Amendment in the pleading may be with the permission of the Court.

**Permission to amend when granted:** A leave to amend the pleading will be granted by the Court whereby the amendment no injury will be caused to the opposite party and he can be sufficiently compensated for by costs or other terms to be imposed by the order and where the amendment is necessary for the determination of the real question in controversy and no injustice will be caused to the other party the Court may allow the amendment of the pleadings.

It is true that the courts have a very wide discretion in the matter of amendment of pleadings. In **Ganga Bhai V Vijay Kumar AIR 1974 SC 1126, the Supreme Court** has observed that "the power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations, and wider the discretion, greater ought to be the care and circumspection on the part of the Court."

**Effect of amendment:** Where an amendment is allowed, such amendment relates back to the date of the suit as originally filed. The court must look to the pleadings as they stand after the amendment and have out of consideration unamended ones.<sup>33</sup>

**Failure to amend<sup>34</sup>:** If a party remained failed to amend after the order of amendment, within the time specified for that purpose in the order or if no time is specified, then within 14 days from the date of the order, he shall not later on be permitted to amend after expiry of the specified time or of 14 days unless the time is extended by the court.

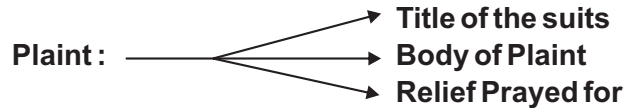
Failure to amend does not result in the dismissal of the suit and the court has discretion to extend the time even after the expiry of the period originally fixed.

Order under rule 17 is Revisable: An order granting or refusing amendment is a 'case decided' within the meaning of section 115 and revisable by the Court. The above order is neither a decree nor appealable order and hence not appealable.

## **Plaint (Order VII)**

**Introduction:** Every civil suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in that behalf. Plaint is a pleading of the plaintiff.

**Meaning:** The word has not been defined in the code but it can be said to be a statement of claim, a document, by presentation of which the suit is instituted.



**Title of the suits Plaintiff:** Body of Plaintiff Relief Prayed for

**Title:** Title of the suit consists of the name of the Court, case number to be given by the office of the Court and descriptions of parties.

**Body of Plaintiff:** In this part the plaintiff consists of the facts constituting the cause of action and when it arose.

**Reliefs:** The plaintiff shall finally contain the relief which the plaintiff claims either simply or in the end. Every plaintiff shall state specifically the relief which the plaintiff claims either simply or in the alternative.<sup>35</sup> Generally, the plaintiff is not entitled to relief for which there is no foundation in the pleadings, except in a case where on the pleadings, issues and evidence the relief is clear because the primary duty of the Court is to do justice and the rules of procedure are meant to advance the cause of justice and not to impede it.

The plaintiff ought to be given such relief as he is entitled to get on the facts established on the basis of the evidence in the case even if the plaintiff does not contain a specific prayer for the relief. The equitable relief under Order VII, Rule 7 may be granted even though grounds on which relief is sought have not been stated as required by the rule.

**Particulars of Plaintiff:** A plaintiff shall contain the following particulars:

- 1) <sup>36</sup>
  - a) the name of the Court in which the suit is brought;
  - b) the name, description and place of residence of the plaintiff;
  - c) the name, description and place of residence of the defendant, so far as they can be ascertained;
  - d) 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;
  - f) the facts showing that the Court has jurisdiction;
  - g) the relief which the plaintiff claims;
  - h) where the plaintiff has allowed a set off or relinquished a portion of his claim the amount so allowed or relinquished, and
  - i) 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.
- 2) In case of recovery suit the precise amount claimed or where it is for the accounts or mesne profits or for moveable in the possession of the defendant or for debts, which cannot be determined, the approximate amount or value thereof.<sup>37</sup>

- 3) The description of the immovable property.<sup>38</sup>
- 4) The interest and liability of the defendant.<sup>39</sup>
- 5) If the suit is filed in the representative character it must state the facts about an actual existing interest of the plaintiff in the subject matter and that all steps necessary have been taken by him to institute such suit.<sup>40</sup>
- 6) The grounds upon which the exemption from the law of limitation where the suit is time barred.<sup>41</sup>

### **Return of Plaintiff (Order 7 Rule 10)**

#### **Rule 10:**

- 1) Subject to the provisions of Rule 1 GA, the plaintiff shall at any stage of the suit be returned to be presented to the Court in which it should have been instituted.
- 2) **Explanation:** For the removal of doubts, it is hereby declared that a Court of Appeal or Revision may direct, after setting aside the decree passed in a suit, the return of the plaintiff under this sub-rule.
- 3) Procedure on returning plaintiff: On returning a plaintiff the judge shall endorse thereon the date of its presentation and return, the name of the party representing it, and a brief statement of the reasons for returning it.

#### **Rule 10-A:** Power of Court to fix a date of appearance in the Court where plaintiff is to be filed after its return -

- 1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaintiff should be returned, it shall, before doing so, intimate its decision to the plaintiff.
- 2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court -
  - a. specifying the Court in which he proposes to present the plaintiff after its return,
  - b. praying that the Court may fix a date for the appearance' of the parties in the said Court, and
  - c. requesting that the notice of the date so fixed may be given to him and to the defendant.
- 3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaintiff and notwithstanding that the order for return of plaintiff was made by it on the ground that it has no jurisdiction to try the suit,-
  - a. fix a date for appearance of the parties in the court in which the plaintiff is proposed to be presented, and
  - b. give to the plaintiff and to the defendant notice of such date for appearance. Where notice of the date for appearances is given under Sub-rule (3),-
- 4) Where notice of the date for appearances is given under Sub-rule (3)–

- a. It shall not be necessary for the Court in which the Plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that court, for reasons to be recorded, otherwise directs, and
  - b. the said notice shall be deemed to be a summons for the appearance of the defendant in the suit in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.
- 5) Where the application made by the plaintiff under Sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

### **Rejection of Plaint (Order 7 Rule 11)**

**Rule 11:** The Plaint shall be rejected in the following cases:-

- a. Where it does not disclose a cause of action.
- b. Where the relief claimed is undervalued, and the plaintiff on being required by the Court to correct the valuation within the time to be fixed by the Court fails to do so.
- c. Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the Court to supply the requisite stamp- paper within the time to be fixed by the Court, fails to do so.
- d. Where the suit appears from the statement in the plaint to be barred by any law.
- e. Where it is not filed in duplicate.
- f. Where the plaintiff fails to comply with the provisions of Rule-9.

Provided that the time fixed by the Court for the correction of the valuation or for the supply of the requisite stamp- papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by the cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

**Rule 12:** Procedure on rejecting plaint: Where a plaint is rejected the judge shall record an order to that effect with the reasons for such order.

**Rule 13:** Where rejection of plaint does not preclude presentation of fresh plaint: The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

**Procedure on Admitting Plaint<sup>42</sup>:** Where the plaint of plaintiff has been admitted and the Court directs that the summons be served on the defendant as provided in Order V, Rule 9, the Court will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within 7 days from the date of such order along with requisite fee for service of summons on the defendants.

**Production of Documents on Which Plaintiff Sues or Relies<sup>43</sup>:**

1. Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.
2. Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.
3. A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

But, the provision of Rule 14 shall not apply to the following documents<sup>44</sup> :

- i) the document produced for the cross examination of the plaintiff witness, or
- ii) handed over to a witness merely to refresh his memory.

### **Written Statement (Order VIII)**

**Meaning:** A Written Statement is a pleading of the defendant for submission of every material fact to answer the allegation made by the plaintiff in his plaint. The word has not been defined in the code, but the same may be defined as under:

A Written Statement is the pleading of the defendant wherein he deals with every material fact alleged by the plaintiff in his plaint and also states any new facts in his favour or takes legal objections against the claim of the plaintiff.

**Preparation of Written Statement:** All relevant rules of pleading apply to a Written Statement and it should be prepared with great caution. In the Written Statement firstly, the defendant should mention the name of the Court trying the suit, then-1 the names of the parties. It is not necessary to mention the names, directions and place of residence of all the parties in the title of the Written Statement, but mentioning the name of the 1st plaintiff and 1st defendant is enough. The number of suit may be mentioned thereafter.

The defendant thereupon replies to each Para of the plaint except where any preliminary objection like maintainability of the suit, locus standi of the plaintiff to file suit, the non-joinder or misjoinder of parties as to the jurisdiction of the Court or as to limitation, for consideration which is necessary in the 1<sup>st</sup> instance before the suit is tried on merits.

**Rules of Defence:** The denial in a Written Statement must be specific and not general. The grounds alleged by the plaintiff must be denied by a defendant specifically with each allegation of fact of which he does not admit the truth, except damages.<sup>45</sup>

The denial should not be vague or evasive. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as regards a person under disability.<sup>46</sup>

In cases where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts in the plaint except as against a person under disability, but the Court, in its discretion, may require any such fact to be proved.<sup>47</sup> Whenever a judgment is pronounced under Rule 2, a,

decree shall be drawn up in accordance with such judgment.<sup>48</sup>

**Time to File Written Statement:** The defendant shall file his Written Statement of his defence within 30 days from the date of service of summons on him, but the above time may be extended by the Court further for a period, which shall not be later than 90 Days from the date of service of summons.<sup>49</sup>

**Extension of time to Present Written Statement:** Ordinarily the time schedule prescribed by Order VIII, Rule 1 has to be honoured. The extension of time sought for by the defendant from the Court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired.

The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the Court.

**Subsequent Pleadings<sup>50</sup>:** According to Order VIII, Rule 9, no pleading subsequent to the Written Statement of a defendant other than by way of defence to set off or counter - claim shall be presented except by the leave of the Court, but the Court may, at any time require a Written Statement or additional Written Statement from any of the parties and fix a time of not more than 30 days for presenting the same.

**Failure to present Written Statement:** Where a party fails to file a Written Statement as required under Rule 1 or Rule 9 within a time permitted or fixed by the Court, the Court shall pronounce judgment against him or make such order as it thinks fit and on such judgment a decree shall be drawn up.

The provisions regarding duty of defendant to produce documents upon which relief is claimed or relied upon by him have been given in Order VIII, Rule 1-A.

### **Set-Off (Order VIII, Rule 6)**

**Meaning:** Set-off means a claim set up against another. It is a counter claim against the plaintiff but in essence it is a form of defence in which the defendant while acknowledging the justice of the plaintiffs claim sets up a demand of his own to counter balance it either in whole or in part.

The doctrine of set – off is included in Order VIII, Rule 6 and is as under:

1. Where in a suit for recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiffs suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.
2. **Effect of set-off:** The written statement shall have the same effect as a plaint in a cross- suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off; but this not after the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.
3. The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of a set-off.