Pleadings

Lesson 10

KEY CONCEPTS

■ Pleadings ■ Plaint ■ Written Statement ■ Material Facts ■ Temporary and Permanent Injunctions ■ Interlocutory applications ■ Writs ■ Petitions ■ Appeals ■ Memorandum of Appeals ■ Arguments on Preliminary Submissions ■ Arguments on Merits ■ Legal Notices

Learning Objectives

To understand:

- Pleadings and their Drafting
- Fundamental Rules of Pleadings
- Suits for Injunctions
- Drafting of Plaints
- Drafting of Written Submissions
- Notice and its drafting
- Petitions and their Drafting
- Appeals and their Drafting
- Affidavit and its drafting
- Essential concepts relating to pleadings

Lesson Outline

- Background of Indian System
- Construction of Pleading
- Introduction & Meaning
- Fundamental Rules of Pleadings
- Suits for Temporary and Permanent Injunctions
- Written Statement
- Petitions
- Writ Petition
- Indemnity Bonds & Undertakings
- Drafting of Affidavit in Evidence – Important Considerations
- Arguments on Preliminary Submissions
- Arguments on Merits
- Legal Pleadings/Written Submissions
- Witnesses in Pleadings
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites/ video links)

REGULATORY FRAMEWORK

- Civil Procedure Code, 1908
- Negotiable instruments Act, 1881
- Indian Partnership Act, 1932.
- Indian Evidence Act, 1872
- Transfer of Property Act, 1882
- The Companies Act, 2013
- Indian Contract Act of 1872
- Registration Act, 1908

BACKGROUND OF INDIAN SYSTEM

In the ancient times when the king was the fountainhead of all justice, a petitioner used to appear before the king in person and place all facts pertaining to his case before His Majesty. After such oral hearing, the King used to summon the other party and thereafter listen to the defence statements put forward by the person so summoned. There used to be some sort of cross examination or cross questioning of the parties by the King himself. Thereafter, the decision was announced. There was hardly any system of written statements; some "pleadings" did exist, although they were oral. The King and his courtiers kept on what may be called a mental record of the proceedings. Perhaps only few serious and otherwise significant cases, their decisions were recorded. Similarly, during the Mughal period also pleadings were oral in form. During British period with the establishment of Diwani Courts, High Courts etc. and with the passage of time, judicial system underwent a change. The administration at justice was separated from the executive and assigned to the court of law. Complexity resulted in enormous litigation, and oral hearing of the ancient times became almost impossible. Scribes used to keep records of all the proceedings. Gradually, this procedure was also abandoned, and the litigants were allowed to bring their claims and contentions duly drawn up to file them before the Hon'ble courts. When this change exactly happened, it is difficult to say. Experience was a better teacher; and the changes in court procedure took place not only in the light of the past experience but also in the face of expediency. Written proceedings made the task of the courts of law easier and less complicated than the earlier oral proceedings. By the turn of 19th century, the procedure of pleadings has become fairly elaborate and systematized. Pleadings has been substantially reproduced from the Code of Civil Procedure Code.

CONSTRUCTION OF PLEADING

It is a settled law that the pleadings should be construed liberally. The very object of pleadings being to certain for the guidance of the parties and the court, the material fact in issue, it follows that they are not to be too strictly, narrowly or pedantically construed. Does very document is referred to and relied on in the pleadings, the contents of the document might well be considered as constituting a part of the pleadings and when such document happens to be a notice given by the landlord to the tenant relating to the subject matter of the controversy, there is all the more reasons to treat the contents of the document as part of the pleading and to fix the opposite party with the knowledge of its contents.

INTRODUCTION & MEANING

When the civil codes came to be drafted, the principles of pleadings were also given statutory form. Vide Order VI Rule 1 of the Code of Civil Procedure, 1908 "Pleading" shall mean 'plaint' or 'written statement'. Mogha has elaborated this definition when he remarked that "pleadings are statements in writing drawn up and filed 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".

Pleading includes plaint and written statement.

Before the trial of a civil suit starts, it is highly desirable that the Court should know exactly what it has to decide upon, and the parties should know exactly what they are contesting about. The most satisfactory method of achieving this object would be one by which each party in turn is obliged to state his own case, and answer the case of the opponent before the trial comes on. Such statement of the parties and the replies to them are known as pleadings. 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. For one, words 'plaints' and 'complaints' are nearly synonymous. In both, the expression of grievance is predominant. When a suitor files a statement of grievance, he is the plaintiff and he files a 'complaint' containing allegations and claims remedy. As days passed, we have taken up the word 'Plaint' for the Civil Court and the word 'Complaint' for the Criminal Court. Section 26 of the Code of Civil Procedure, 1908 states that every suit shall be instituted by the presentation of a Plaint or in such other manner as may be prescribed. Order IV Rule 3 states "every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf". Similarly, Order VIII Rule 1 defines that when a suit has been duly instituted, a summon may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant.

The document stating the cause of action and other necessary details and particulars in support of the claim of the plaintiff is called the "plaint". The defence statement containing all material facts and other details filed by the defendant is called the "written statement". The written statement is filed by the defendant as an answer to the contentions of the plaintiff and it contains all material and other objections which the defendant might place before the court to admit or deny the claim of the plaintiff.

Plaint	***Written Statement***
Document stating the cause of action and other necessary details and particulars in support of the claim of the plaintiff.	Defence statement containing all material facts and other details filed by the defendant.

Pleadings are, therefore, the foundation of any litigation, and must be very carefully drafted. Any material omission in the pleading can entail serious consequences, because at the evidence and argument stages, parties are not permitted to depart from the points and issues raised in the pleadings, nor can a party be allowed to raise subsequently, except by way of amendment, any new ground of claim or any allegation of fact inconsistent with the previous pleadings of the party pleading the same. In some cases, the court may allow amendment of the plaint or the written statement on the application of a party to the suit. This can be done by taking recourse to order VI Rule 17 of Civil Procedure Code, 1908. Another case of departure is where the defendant pleads for set-off or that of the counter-claim under order VIII of the Code of Civil Procedure, 1908.

Pleadings contain material facts, contentions and claim of the plaintiff, and the material facts, contentions, denials or admissions of claims by the defendants. There may also be counter claims by the defendant which may of two categories –

(i) a claim to set-off against the plaintiff's demand is covered by order VIII Rule 6, and

(ii) and independent counter claims which is not exactly set off but falls under some other statute.

While the former is permitted to be pleaded by the courts, the latter is not, but when the defendant files such counter claims, the written statements is treated as a plaint.

Object of Pleadings

The Paramount object of all rules of procedure is to regulate the business and procedure of the courts, so that justice may be done between the parties, according to their rights and interests at law and contracts. The whole object of pleading is to give a fair notice to each party of what the opponent's case is. 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. 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. The sole object of the system of pleading is to secure that both the contending parties shall know what are the real points of controversy between them in order that they may have an opportunity of bringing forward such evidence or to submit such arguments as may be appropriate to determine such points at issue between them, and to prevent surprise at the trial.

Odgers in his "Pleading and Practice" (14^{th} Ed. At p 65) observes:

"The defendant is entitled to know what it is that the plaintiff alleges against him; the plaintiff in his turn is entitled to know what defence will be raised in answer to his claim. The defendant may dispute every statement made by the plaintiff, or he may be prepared to prove other facts which put a different complexion on the case. He may rely on a point of law, or raise a cross claim of his own. In any event, before the trial comes on it is highly desirable that the parties should know exactly what they are fighting about, otherwise they may go to great expense in procuring evidence to prove at the trial facts which their opponents will at once concede. It has been found by long experience that the most satisfactory method of attaining this object is to make each party in turn state his own case and answer that of his opponent before the hearing. Such statements or answers to them are called the pleadings."

Main Object of pleadings

1) To define the issue of fact and question of law to be decided between the parties;
2) To give fair notice of the case which has to be met so that the opposite party may direct his evidence to the issue disclosed by them; and
3) To provide a brief summary of the case of each party, which is readily available for reference and from which the nature of the claim and defence may be easily apprehended, and to constitute a permanent record of the questions raised in the action and of the issues decided therein, so as to prevent future litigation upon matters already adjudicated upon between the litigants.

Function of pleadings

The function of a pleading is not simply for the benefit of the parties but also and perhaps primarily for the assistance of the court by defining with precision for the assistance of the court the area beyond which without the leave of the court and consequential amendment of the pleadings, the conflict must not be allowed to extend.

Importance of pleadings

The importance of the art of pleading is insufficiently realised in this country. It is at least as important as any other part of the duties of an advocate. Moreover, it demands a high degree of skill, and the final form of any pleading should be stated only by advocates who have the necessary skill and experience. The case of a party is one which is set out in his pleading. No relief based on any ground not set out as pleading can be granted. A party urging a ground which is entirely a legal ground may be allowed to set it up at a later stage but plea based on a question of fact or a mixed question of law and fact cannot be allowed to be taken at a later stage. A finding based on no pleading and no evidence, cannot be sustained.

Rule of Pleading and a Rule of Proof

It is necessary to keep in mind the distinction between a rule of pleading and a rule of proof. That inconsistent pleading can be pleaded it in the alternative is a well-established rule of pleading, but the proof of a plea depends upon the provisions of substantive law.

FUNDAMENTAL RULES OF PLEADINGS

It is a rule to observe in all Courts that a party complaining of an injury and suing for redress, can recover only *secandum allegata et probate*[1]. The provisions of law under which the suit has been instituted should also be mentioned[2]. The pleas should be specifically mentioned, as the evidence cannot be looked into in the absence of a specific plea or point. When pleading contains pleas which are apparently inconsistent or irrevocable, it is not open to the court to ignore one play and act merely on the basis of another. The Court will however see the substance, if the plea is not properly worded. The four fundamental rules of pleadings are:

1) That a pleading shall contain, only a statement of facts, and not Law;
2) That a pleading shall contain all material facts and material facts only;
3) That a pleading shall state only the facts on which the party pleading relies and not the evidence by which they are to be proved;
4) That a pleading shall state such material facts concisely, but with precision and certainty.

Rule I: Facts and not Law

One of the fundamental rules of pleadings embodied in Order VI Rule 2 is that a pleading shall contain only a statement of facts and not law. The duty of the pleader is to set out the facts upon which he relies and not the legal inferences to be drawn from them. And it is for the judge to draw such inferences from those facts as are permissible under the law of which he is bound to take judicial notice. A judge is bound to apply the correct law and draw correct legal inferences and facts, even if the party has been foolish to make a written statement about the law applicable of those facts. If a plaintiff asserts a right in him without showing on what facts his claim of right is funded or asserts that defendant is indebted to him or owes him a duty without alleging the facts out of which indebtedness or duty arises, his pleading is bad.

The parties should not take legal pleas but state the facts on the basis of which such legal conclusions may logically follow and which the court would take a judicial notice of. Thus, where a party pleads that the act of the defendant was unlawful, or that the defendant is guilty of negligence, or that the defendant was legally bound to perform specific contract, such a pleading would be bad. In such cases, the plaintiff must state facts which establish the guilt or negligence of the defendant, or how the particular act of the defendant was unlawful, of the fact leading to the contract which thus bound the defendant. The plaint should only contain the recitals that would form the basis of the claim. The legal position created thereby need not be described.

Thus, in a declaratory suit, it is not enough to plead that the plaintiff is the legal heir of the deceased for this is an inference of law. The plaintiff must show how he was related to the deceased, and also show the relationship of other claimants, and other material facts to show that he was nearer in relation to the deceased than the other claimants.

Similarly, on money suit it is not enough that the plaintiff is entitled to get money from the defendant. He must state the facts showing his title to the money. For example, he should state that the defendant took loan from the plaintiff on a particular date and promised to return the money along with specified interest on a fixed date, and that he requested the defendant to return the said amount after such date but then he refused to return the

1. William Maleomson v. Glayton 14 Moore PC 128
2. Lalta v Ambika 1968 All LJ 1133.

money. If some witnesses were present when the money was lent or when the demand was made or when the refusal by the defendant was made, the fact should be stated specifically, for at the time of the trial the Court may order the plaintiff to adduce evidence in support of his statement, and then he can rely on the evidence of the witnesses in whose presence he had lent money or in whose presence he had made a demand for the return of the money.

In a matrimonial petition, it is not enough to state that the respondent is guilty of cruelty towards the petitioner-wife and that she is entitled to divorce. The petitioner must state all those facts which establish cruelty on the part of the respondent. She may state that her husband is a drunkard and comes home fully drunk and in a state of intoxication he inflicted physical injuries on her, she should specify dates on which such incidents took place; or that the husband used to abuse her or beat her in the presence of her friends and relations or that after her marriage she was not allowed to visit her parents or that he was forcing her to part with her dowry, giving threats of physical beating; or that immediately after her marriage till date the respondent did not even talk to her, nor he cohabited with her. It is such facts which can establish physical or mental cruelty.

In another example plaintiff files a suit for negligence and damages. It is not enough for him to state negligence. First of all, the plaintiff must state those facts which establish the defendant's duty towards the plaintiff. Thereafter, he must state how and in what manner the defendant was guilty of negligence. Thus, he must state all the facts on which his plaint is based. The inference of law to the breach of duty should be left to the Court because the correct legal principles will be applied by the Court and the plaintiff cannot even add any prayer that a particular legal conclusion which follows must be applied. The only prayer that he may add is that the relief may kindly be granted to him.

Omission to state all the facts renders the pleading defective whatever inferences of law might otherwise have been pleaded. Such a plaint may be rejected on the ground that it discloses no cause of action. The plaintiff or the defendant as the case may be, and his counsel must be on their guard not to omit any facts and straight-a-way jump to pleading containing legal interference without stating such facts.

For example, in a suit for recovery of money for the goods sold, the defendant should not just take the plea that he is not liable. Such a statement is a plea of law and can hardly stand and in spite of his good defence his case will fail. In such a case the defendant must clearly state that he did not purchase any goods from the plaintiff nor was there an agreement to do so. He may also state that though the goods were sent to him, but he did not take the delivery as he had placed no order therefore or that the goods were sold to him on credit and the money was to be paid to the plaintiff after the sale of such goods and the goods were still lying with him unsold, and that he was willing to return the goods to the plaintiff in accordance with the written or oral understanding that in case of the goods remaining unsold the same shall be taken back by the plaintiff. Such facts would be valid pleas.

In another example of a suit for defamation and damages, it is not sufficient for the plaintiff to state that the defendant defamed him and therefore he was entitled to damages or special damages. The plaintiff must state all the facts of the defendant act or acts such as his public utterances in which he named the plaintiff and made remarks about his character or profession or the publications in which he was painted in a manner as would in the opinion of a common man lower him in the eyes or estimation of society. Wherever possible, the plaintiff must give the exact words spoken or used in the entire sentence or statement and also give the general, grammatical or implied meaning of such words spoken or used. Wherever there is any ambiguity, he may take the plea of "inuendo" and state how such a remark was commonly understood by persons known to him. Thus, the plaintiff should build his case on facts from which the conclusion would naturally and logically follow.

The rule that every pleading must state facts and not law is subject to the following exceptions:

i. Foreign Law

ii. Customs

iii. Mixed question of law and fact

iv. Legal Pleas

v. Inferences of law.

Rule II: Material Facts

The word "material" means necessary for the purpose of formulating a complete cause of action. Cause of action mean – every fact which if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgement of the Court. When a litigant comes to a legal practitioner, he brings all facts and circumstances pertaining to a case. In fact, he tries to narrate each and every event which may possibly have a remote bearing upon the case. Not all such facts are important. If everything were to be included in the plaint, then the plaint is likely to become so voluminous that the learned judge is likely miss the essential track and be guided by the inessentials.

What is necessary therefore are the facts which are material; facts which have a direct and immediate bearing on the case, facts which are secondary or incidental may easily be omitted. Of course, the lawyer must weigh each fact and test its significance and relevance in relation to the given case. Marshalling of facts is what a good lawyer would always do before he sets them down in form of a plaint.

The second fundamental rule of pleading is therefore, that every pleading shall contain and contain only, a statement of the material fact as on which the party pleading relies for his claim or defence. This rule is embodied in Order VI Rule 2 and it requires that –

I. The party pleading must plead all material facts on which he intends to rely for his claim or defence as the case may be; and

II. He must plead material facts only, and that no fact which is not material should be pleaded, nor should the party plead evidence, nor the law of which a Court may take a judicial notice[3].

The rule is indeed a strict one. The question would naturally arise: what are the material facts? Indeed, every fact on which the cause of action or the defence is founded is material fact. The purpose entertained by the rule is that every unnecessary and irrelevant fact need not be brought on record, and the rule acts as a damper to the litigants, habit of stating all details that strike their mind, whether such details are relevant or not, it necessitates the process of elimination on the part of the litigant. All facts which will be required to be proved at the trial in order to establish the existence of a cause of action or defence are material facts. Then there are other facts which do not directly establish the cause of action or defence, but which nonetheless are material facts in that the party pleading them has an inherent right to prove them at the trial.

Whether a particular fact is material or not will depend upon the circumstances of the case. A fact may not appear to be material at the initial stage but it may turn out to be material at the time of the trial. Thus if a party is not able to decide whether a fact is material or not, or if he entertains a reasonable doubt as to the materiality of a particular fact, it would be better to include than to exclude, because if a party omits to state or plead any material fact, he will not be permitted to adduce evidence to prove such a fact at the trial unless the pleading is amended under Order VI Rule 17. The general rule is that a party cannot prove a fact which he has not pleaded.

The task of a lawyer is therefore rather difficult. He must observe the rule that only material facts are to be pleaded, and, at the same time, he must not exclude any fact which may seem apparently unnecessary but which may turn out to be material as the trial progresses. Thus, he must visualize all the possible directions or dimensions which the pleadings are likely to assume. An experienced lawyer would marshal all the facts placed

3. Hari Shankar Jain v. Sonia Gandhi AIR 2001 SC 3689

before him by his client and by correlating them, and after carefully examining the interplay between such facts, decide what facts are material to establish the cause of action or defence. There after he would prepare or rough or a mental outline of the pleading and submit all such facts to a close analysis in order to make sure whether if he is able to prove all such material facts he would succeed. By a process of elimination, he must also see whether by excluding certain seemingly immaterial facts from the outline he has prepared, he would still succeed. If he can return an affirmative answer, he should exclude such irrelevant facts, but if the answer be in the negative, then he must include them another way of testing the materiality of the facts would be to ask whether by proving a particular fact, he would certainly establish the cause of action or the defence.

> "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence.

The idea is that the pleading should not include any fact which would not assist the party even if such a fact is proved. And why at all waste energy, time and money is establishing the correctness or otherwise of a fact which does not advance the party's case? One of the reasons why the litigation drags on for years is that the litigants do not come to the point, there being much about nothing. In India, the courts are filled with all sorts of litigation. The lawyers are taking briefs of all sorts and they are extremely busy. They have hardly any time to examine the materiality of the facts narrated to them by their clients. The pleadings, therefore, become unwidely and voluminous, so much so that at the time of framing the issues, the matter becomes really a hard nut to crack. The litigation drags on withstanding the wishes of the parties to the contrary. It is the duty of the lawyers to ensure that the pleadings conform to the rules laid down in the code of civil procedure. They should be guided more by their own sense of proportion rather than succumb to every whim or eccentricity of their clients.

Instances of Material Facts: In a suit for damages for injuries sustained in a collision, the plaintiff in framing his statement of claim should set out the circumstances of the collision, so far as they are known to him, with clearness and accuracy to enable his adversary to know the case he has to meet, he should also state in particular terms the particular acts of negligence which, according to him, caused the collision.

In a suit for ejectment of a trespasser from the land and for injunction it is material to allege that defendant "threatens and intends to repeat the illegal act" similarly, if a party seeks a stay order against any authority's act of demolition his premises, shop or building he must allege that he is owner of the property and the plans or the map thereof was duly sanctioned by the appropriate authority. Or if a government land, he must allege that he has been in undisturbed possession thereof for over twelve years. Such facts are material, because if proved, they will establish the cause of action.

In a suit for defamation, it is material to allege that the words were intended to defame the plaintiff or at least they were so understood by men at large, if the words are ambiguous, then "innuendo" must be pleaded that they were ironically used or were intended so to be understood.

Where a party claims the benefit of a special rule or custom then he must allege all facts which bring the case within the ambit of that special rule or custom. For example, where a marriage between two sapindas or between two persons within the degrees of prohibited relationship is challenged in some property matter, the party that is challenging the validity of the marriage must allege that there was no custom governing the parties which permitted or sanctioned such a marriage between sapindas. It is material to allege the existence of a long-established family or caste custom governing the parties to the marriage which permitted or sanctioned such a marriage.

In a money suit, it is material to allege part-payment of the loan and also any other fact which gives a new lease of three years' time to the loan in order to save the suit from the bar of limitation.

When a plaintiff bases his claim on some document, it is material to state the effect of such a document. For example, where the case is based on a sale-deed, it is material to state that a particular person has sold property to him by a sale-deed dated so and so which was duly registered.

In a suit for specific performance of a contract, it is material to allege that the plaintiff has always been willing and is willing to perform his part of the contract.

Example of Facts not Material

In a suit on a promissory note, it is not material to state that the plaintiff requested the defendant to make the payment and he refused, because no demand is necessary when the promissory note becomes due and it is payable immediately.

Similarly in a suit for recovery of money for the goods sold, it is not material to state that the goods belonged to the plaintiff or that the goods were sold to the defendant on the belief that he would honestly make the payment.

In the case of damages, general damages are presumed to be the natural or probable consequence of the defendant's act. Such damages need not be proved. But special damages will not be presumed by law to be the consequence of the defendant's act but will depend on the special circumstances of the case. Therefore, it will have to be proved at the trial that the plaintiff suffered the loss and also that the conduct of the defendant resulted in the loss so suffered by the plaintiff. In such cases the proof of special damages is essential to sustain an action. A person has no right of action in respect of a public nuisance unless he can show some special injury to himself which is over and above what is common to others.

Thus, it is clear that whereas general damages may not be pleaded the special damages must be alleged, and all facts on which such special damages are based are material to the pleading. They are material because they will have to be proved. All such facts must, therefore, be mentioned or stated with necessary particulars to show what special damage the plaintiff suffered. For example, in a suit for defamation it will have to mentioned that services of the plaintiff were terminated as a result of a particular article which damaged the professional reputation of the plaintiff so much salary which he might have continued to get but for the publication of the defamatory article.

Exception to the General Rules: The second fundamental rule of pleading, namely, that every pleading must state all the material facts and the material facts only is subject to the following well known exceptions:

i. **Condition Precedent**: The performance of occurrence of any condition precedent need not be pleaded as its averments shall be implied in the pleading. But where a party chooses to contest the performance or occurrence of such condition, he is bound to set-up the plea distinctly in his pleading. This follows from the provision contained in Order VI Rule 6 C.P.C. which runs thus:

   "Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading."

   For example, X agrees to build a house for Y at certain rate. A condition of the contract is that payment should only be made upon the certificate of Y's architect that *** amount is due. If X desires to file a suit for money against Y, the obtaining and presenting of the certificate from Y's architect is a condition precedent to X's right of action. Here it is not necessary of Y to state in his plaint that he has obtained the said certificate. He can draft a plaint showing a good *prima facie* right to the agreed amount without mentioning any certificate. It will be for Y to plead that the architect has never certified that the amount is due.

ii. **Presumption of Law**: Order VI Rule 13, C.P.C., provides that neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied. For example, in a suit on a promissory note the plaintiff need not allege consideration as Section 118 of Negotiable instruments Act, 1881 raises a presumption in his favour. It is also not necessary to state that the defendant executed the bond of his own free will and without any force or fraud because the burden of proving any fact invalidating the bond lies upon the defendant. In *Sethani v. Bhana*[4], a sale deed was executed by a tribal woman who was old, illiterate and blind, in favour of one of her relatives with whom she was living till her death and was dependent on him. It was held that it was upon that relative to prove that the sale-deed was executed under no undue influence. A party should not plead anything which the law presumes in his favour.

Regarding legal presumptions, the exception applies to only such facts as the court "shall presume" and not to those facts which the court may presume", and therefore the facts falling under the latter class must be pleaded.

iii. **Matters of Inducement**: Another exception to the general rule is regarding facts which are merely introductory. Such facts only state the names of the parties, their relationships, their professions and such circumstances as are necessary to inform the Court as to how the dispute has arisen. Such facts are hardly necessary or material to the pleading, but they are generally tolerated and are set in the pleadings by both the parties in order to facilitate the court to take a stock of the situation of the parties. It is better if such prefatory remarks are cut down to the minimum.

Rule III: Facts not Evidence

The third fundamental rule of pleadings is that only facts must be stated and not the evidence there of as there is a tendency among the litigants to mix up the bare facts with the facts which are in realty the evidence. At the stage of pleading, the Court and the opposite party should be supplied with the facts and such contentions on which the claim is founded; the plaintiff must keep the facts in evidence for a later stage of evidence. Order VI Rule 2 of C.P.C. enjoins that every pleading shall contain a statement of the material facts on which the party pleading relies for his claim or defence but not the evidence by which they are to be proved. While drafting a plaint, a lawyer must distinguish between facts which are asserted and which have to be established through evidence whether documentary or oral, and facts which are, by themselves, in the nature of evidence. At the initial stage only, the former facts have to be narrated, and when the state of evidence comes, then the other facts will be represented as a part of evidence in order to establish the first set of facts. The reason behind the rule stating evidence is that if the evidence were also allowed to be stated in the pleading, then there shall remain no limit of details and the chief object of the pleading would disappear. Evidence also consists of facts. Then how to distinguish between the two kinds of facts (i.e., material facts and evidence)? Long back in *Ratti Lal v. Raghu AIR 1954 VP 53*, the question was answered thus: Material facts are those facts which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Evidence also consists of facts and in order to distinguish between the two kinds of facts, the material facts on which the party pleading relies for his claim or defence are called *facta probanda* and the facts by means of which they (i.e., material facts) are be proved are called *facta probantia*.

***(a) Facta probanda*:** The facts which are to be proved. These are the facts on which a party relies and are ought to be stated in the pleading.

4. AIR 1993 SC 956.

(b) ***Facta probantia***: These are the facts which are not to be stated because by their means *facta probanda* are proved. Thus, these facts are the evidence as to the existence of certain facts on which the party relies for his cause of action or defiance as the case may be. *Facta probanda* are not facts in issue, but they are relevant in that at the trial their proof will establish the existence of facts in issue. No doubt in certain cases both the facts in issue and their facts in evidence are mixed up and are almost indistinguishable. They should not be stated in the pleading.

For ex., A was married to B in accordance with a particular custom governing marriage between A and B. In this case the "custom" is a both fact in issue and a fact in evidence, because once the custom is proved, then the marriage also, stands proved. In the pleading, it is sufficient to allege that the marriage was celebrated in accordance with a particular custom. At the evidence stage, it will be sufficient to refer to the manual of customary law which records customs.

The following rules have been enacted under the Code of Civil Procedure, 1908 and hereunder we elaborate them with the help of suitable illustrations:

a. **Mental Condition:** Order VI Rule 10 clearly says that wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. Thus, it is sufficient to allege that the defendant has cheated the plaintiff to the extent of Rs. 10,000/. It is not necessary, nor would it be in order, to plead how the defendant has cheated the plaintiff. The "how" part would be evidentiary and should not be pleaded. In a suit for malicious prosecution, the plaintiff should only allege that the defendant was actuated by malice in prosecuting him. The details of any previous hostility of the defendant's previous conduct towards the plaintiff should not be stated.

b. **Notices:** Rule 11 of Order VI lays down that wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact unless the form or the precise terms of such notice or the circumstances from which such notice is to be inferred, are material. In many cases notice has to be alleged as a material fact. For example: In a suit to recover trust property from a person to whom a trustee has given it in breach of the trust or in a suit where priority for subsequent transfer is claimed. In such cases, it is sufficient to allege notice as a fact. It is not necessary to state the entire from or precise words of the note, nor any other circumstances from which such a notice could be inferred sometimes, however, the form or the precise words of the notice are material under must be alleged. For example: where the plaintiff claims to have determined the monthly tenancy by 15 days' notice to quit, the pleading should state "On 14th Jan. dated, the plaintiff served upon the defendant a written notice calling upon him to vacate the house and deliver up possession to him on the expiry of January the 31st. In such cases the precise form and words of the notice are material and must therefore be clearly stated in the pleading.

c. **Implied Contract or Relation:** Order VI Rule 12 directs that wherever any contract or any rotation between any persons is to be implied from a series of letter or circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters conversations or circumstances without setting them out in detail. And if in such case the person pleading desires to rely in the alternative upon more contracts or relations than one as to be implied form such circumstances he may state the same in the alternative. The reason for this rule is that what is really material is the effect of the letter or conversation etc. which are only a part of evidence. Take the case of carrier's contract. The moment the goods are accepted to be carried to a particular destination and the receipt is issued, there is an implied contract, and the receipt for the goods is an evidence of the contract. In this case, it would be sufficient to plead the implied contract by making a reference to the receipt issued. The evidence of the receipt and other matters will come up later. If any contract is to be inferred from letters, the dates of the letters must be given.

d. Presumptions of Law: Order VI Rule 13 states that neither party need in any pleading allege any matter of fact which the law presumes in this favour or as to which the burden of proof lies up-on the other side unless the same has first been specially denied. (e.g., consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

Exception: The only exception to the third fundamental rule of pleadings is to be found in the case of writ-petitions and election-petitions. In such petitions, it is necessary to state matters of evidence in support of the allegations made therein.

Rule IV: Facts to be stated concisely and precisely

Order VI Rule 2 enjoins that every pleading must state the material facts concisely, but with precision and certainty. It is a rule to be observed in all courts that a party complaining of an injury and suing for redress, can recover only *secundum allegata et probata*. The material facts should be stated in the pleading in a concise form but with precision and certainty the pleading shall be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figure. What this rule means is that the pleading should be brief and to the point. There should be no obscurity or vagueness or ambiguity of any sort otherwise the very purpose of pleading will be defeated. Another point to remember is that no doubt brevity and conciseness are the rule, but brevity should not be at the cost of precision or clarity. Thus, where brevity and precision cannot be achieved without clarity, prolixity in pleading would be justified. If the facts stated in the pleading are all material, then they all must be alleged notwithstanding the prolixity that might cause.

In order to bring precision, conciseness and clarity, a lawyer should have a good command over the language and grammatical structure, and should know the exact meaning of the words. Longer and complex sentence which is likely to become ambiguous should be avoided.

The following points should be kept in mind while drafting a pleading: -

a) The names of persons and places should be accurately given and correctly spelt; spellings adopted at one place should be followed throughout the pleading.

b) Facts should be stated in active and not in the passive voice omitting the nominative.

c) All circumstances and paraphrases should be avoided.

d) 'Terse', 'Short', 'Blunt' sentences should be used as far as possible. All 'its' and 'buts' should be avoided.

e) Pronouns like "he" "she" or "that" should be avoided if possible. Anyway, such pronouns when used should clearly denote the person or the thing to which such pronouns refer.

f) The plaintiff and the defendant should be referred not only by their names. It is better to use the word "plaintiff' or "defendant".

g) Things should be mentioned by their correct names and the description of such things should be adhered to throughout.

h) Where an action is found on some statute, the exact language of the statute should be used.

i) In any pleading, the use of "if', "but" and "that" should be, as far as possible, avoided. Such words tend to take away the "certainty" and can cause ambiguity.

j) Necessary particulars of all facts should be given in the pleading. If such particulars are quite lengthy, then they can be given in the attached schedule, and a clear reference made in the pleading. Repetitions should be avoided in pleadings.

k) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph (Order VI Rule 2). The division of the pleading into paragraphs should be so done as to endure that each paragraph deals with one fact. At the same time, the entire pleading should appear a running and well-knit matter, must not look like isolated fact placed together. Inter-relations ships of paragraphs must seem to exist. All the relevant facts must be stated in strict chronological order.

l) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

Other Rules

Pleading must be Signed

Order VI Rule 14 makes it obligatory that the pleading shall be signed by the party and his pleader (if any). However, where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

The main purpose of this rule is to prevent any possible denial by any party that he did not authorize the proceedings. Thus, even if pleader produces the vakalat-nama duty authorizing him to fight or defend the suit, the signature of the pleader alone would not do. The pleading must bear the signature or thumb impression or any other identification mark of the party concerned. The only exception is that the party is unable to sign by reason of absence or any other good cause. Mere absence would sufficient; “absence” in this context means such as would not enable the party to be present. Where the party is unable to sign the pleading as aforesaid, then a person duly authorized by him will sign the pleading. Such authority to sue or defend must be produced before the court.

Verification of Pleading

Order VI Rule 15, states every pleading shall be verified at the foot by the by any 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. The person verifying shall specify, by reference to the numbered paragraphs of the pleading what he verifies of his own knowledge and what he verified upon on received and believed to be true. The verification shall be signed by the person making it and the date on which and the place at which it was signed. The aim of verification is only to fix responsibility of the statements made in the pleading upon same one before the court proceeds to adjudicate upon them.

A person making a false verification is liable to be punished under the Indian Penal Code, 1860 as making a false statement is by itself an offence. Therefore, the responsibility of verifications is very great and its significance and the consequences thereof must be realized. After the signature to the pleading some space may be left out and then verification should begin.

Striking out pleadings

It is no difference to an application to strike out impertinent matter, it will make the pleading inconsistent and un meaning or insufficient, for the pleading should be amended if necessary. It meant which is pertinent in a pleading not to be ordered to be expunged on the ground of its being scandalous.

Amendment of pleadings

Court and tribunals are constituted to do justice between the parties within the confines of statutory limitations, and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted. Within the limits prescribed by the decisions of the Supreme Court, the discretionary jurisdiction of the tribunals to amend the pleadings is an extensive as that of civil court. The same well settled principle lay down in the matter of amendment to the pleadings in a suit should also regulate the exercise of the power of amendment by a Tribunal. Accordingly, the pleadings should not be too strictly constructed and that regarded should be substance of the matter and not the form.

The general rule governing amendment of pleadings is that a party is not allowed by amendment to set up a new case or a particularly when a suit on the new cause of action is barred by time. But where the amendment does not constitute or amount to the addition of a new cause of action or raise a new and different case already set up, amount mainly to a different or additional approach to the same facts, amendment is to be allowed even after the expiry of the statutory period of limitation. In this context the expression cause of action does not mean every fact which is material to be proved two enable the plaintiff to succeed. Again, the word new cause means new set of ideas. It therefore at the court will not allow an amendment which introduces a new set of ideas acquired by any party by lapse of time.

The court always give leave to amend the pleading of a party. However, negligence or carelessness may have been the first omission and however late the proposed amendment and amendment may be allowed if it can be made without injustice to the other side. The amendment introduces new case, new cause of action, new or alternative relief, correct description, change in the character of suit, to be considered on the basis of the fact and circumstances of each case. The amendment can be allowed at any stage. There is no invariable rule that an amendment which deprives the opposite party of the plea of limitation should always be refused. The court is, however entitled to allow amendment of the plaint even after the period of limitation has expired, holds that the omission was due to a Bonafide mistake on the part of the plaintiff. Rule of amendment of pleadings is essentially a rule of justice, equity and good conscience.

Inconsistent defences

A defence cannot be ruled out merely because it is inconsistent with another defence. It is certainly open to a party to raise inconsistent defences in the alternative, but at the time when evidence is led, he has got to elect as to which of the alternative inconsistent defences he is going to prove.

[5]SUITS FOR TEMPORARY AND PERMANENT INJUNCTIONS

Preventive Relief is granted at the discretion of the court by injunction, Temporary or Perpetual. The Relief of Injunction is an equitable relief and he who seeks equity must do equity. Hence, a party who asks for an injunction must be able to satisfy the court that his dealing of the matter had been fair, honest and free of any fraud or illegality. The Discretion in granting or refusing injunction must be exercised judicially and not arbitrarily.

Following are the kinds of injunctions.

1. Prohibitory Injunction	2. Mandatory Injunction	3. Temporary Injunction	4. Perpetual Injunction

Temporary injunctions are regulated by the Provisions under Order XXXIX of Code of Civil Procedure, 1908. A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit.

A suit may be filled for obtaining permanent injunction. However, temporary injunction can be in the nature of interim relief.

Civil Pleadings

The Code of Civil Procedure is an adjective law as opposed to substantive law and is not primarily intended to create new right or to take away existing rights.

1. **Classes of Civil Courts** – Besides the Supreme Court and High Courts, there are Civil Courts at District level. Highest among them is Court of District Judge, followed by Additional District Judges. The lower Civil Courts are divided in two forms e.g., one by territorial limits and secondarily pecuniary limit. The

5. Reproduced and sourced from the website of e-courts from the Paper Presentation on the topic of the Principles of mandatory injunction By, Smt. Sk. Shireen, Principal Junior Civil Judge Cum Judicial Magistrate of First class, Sompeta and can be accessed at https://districts.ecourts.gov.in/sites/default/files/pdm%20sompetadt07122019.pdf

territorial limit is by jurisdiction of the court and by pecuniary limit it is divided into Civil Judge (Senior Division), Civil Judge (Junior Division) and Small Cause Court. When a suit is filed, if it is of civil in nature, it is filed by a complaint which is submitted to computerized filing centre of a District.

2. **In money suits**: Where the plaintiff seeks the recovery of money, the plaint shall 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.

2A. Where interest is sought in the suit –

(1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out.

(2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

(3) Pleadings shall also state—

(a) the rate at which interest is claimed;

(b) the date from which it is claimed;

(c) the date to which it is calculated;

(d) the total amount of interest claimed to the date of calculation; and

(e) the daily rate at which interest accrues after that date.

3. **Where the subject-matter of the suit is immovable property**: Where the subject-matter of the suit is immovable property, the plaint shall 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 shall specify such boundaries or numbers.

4. **When plaintiff sues as representative**: Where the plaintiff sues in a representative character the plaint 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.

Dilatory Pleas

Pleas which merely delay the trial of a suit on merits have been characterized as 'dilatory pleas'. They simply raise formal objections to the proceedings and do not give any substantial reply to the merits of the case, e.g., the plea that the court-fee paid by the plaintiff is not sufficient. Such pleas should be raised at the earliest opportunity.

Interlocutory Application

"Interlocutory" means not that decides the cause but which only settles some intervening matter relating to the cause. After the suit is instituted by the plaintiff and before it is finally disposed off, the court may make interlocutory orders as may appear to the court to be just and convenient. The power to grant Interlocutory orders can be traced to Section 94 of C.P.C. Section 94 summarizes general powers of a civil court in regard to different types of Interlocutory orders. It provides for supplemental proceedings. The detailed procedure has been set out in the Schedule I of the C.P.C which deals with Orders and Rules.

Interlocutory orders may take various shapes depending upon the requirement of the respective parties during the pendency of the suit e.g., Applications for appointment of Commissioner, Temporary Injunctions, appointment of Receivers, payment into court, security for cause etc. The Supreme Court in *Rashtriya Ispat Nigam Ltd. V. Verma Transport Company, AIR 2006 SC 2800*, placing reliance upon its earlier judgment in *Vareed Jacob v. Sosamma Geevarghese, AIR 2004 SC 3992* explained the distinction between incidental and supplemental proceedings explaining that incidental proceedings are those which arise out of the main proceedings.

Plaint Structure

PLAINT: Particulars to be contained in plaint provided under order VII, Rule 1.

According to this rule the plaint shall contain the following particulars:

(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.

1. Heading and Title: Name of the Court in which the suit is filed indicated at the top of the first page. Heading of the plaint means the court in which the suit is instituted. Therefore, the name of the court has to come on the top of the plaint (Order VII, Rule 1(a)). If a court has various jurisdictions the specific jurisdiction in which the suit is being instituted should be given below the name of the court.

Examples of Plaints

IN THE COURT OF CIVIL JUDGE (Senior Division)_____

OR

IN THE JUDICATURE OF HIGH COURT_____

Original Jurisdiction

Before the heading of the plaint proper space should be left for affixing court-fee stamp. Just below the name of the court, a space should left for the number of the suit. It is as such

Suit No. _____ of_____(Year)

Thereafter the names of the parties to the suit with all necessary particulars should be given. For ex.: AB s/o CD aged _____ yrs, Resident of_____

Plaintiff

Versus

PQ s/o RS aged_____Yrs, Resident of_____

Defendant

If there are more plaintiff or defendant than the names of all plaintiffs/and defendant should be given in plaint as plaintiff No. 1/defendant No.1 and so on.

After the names of the parties the title of the suit should be given for example.

"Suit for specific performance and damages"

or

"Suit for Recovery of money"

or

"Suit for damages for malicious prosecution"

or

"Petition for Restitution of Conjugal Rights u/s 9 of the Hindu Marriage Act, 1955"

Where the plaintiff or defendant is a minor or a person of unsound mind, the fact should be mentioned in the cause-title. At the same time the name and description to the person through whom such person sues or sued should also be given in the cause-title. The forms given at No. 2 in Appendix A to the First Schedule of C.P.C. would be of special assistance in framing cause-titles in particular cases. For example, if plaintiff or defendant is:

(i) **Individual person** - AB S/o _____ Aged _____ Res. of _____

(ii) **Proprietary concern** - AB S/o _____ Aged _____ Res. of _____ proprietor of MIs XYZ and carrying on business at .....

(iii) **Partnership firm** – M/s XYZ, a partnership firm registered under the Indian partnership Act, 1932 with its principal place of business at _____

(iv) **A company** - M/s XYZ, Pvt. Ltd. A company incorporated under the companies Act having its registered office at _____

(v) **Company in Liquidation** - M/s XYZ Ltd. In liquidation through liquidator Mr. ABC having office at _____

(vi) **Statutory Corporation** - The Life Insurance Corporation of India established and constituted under the Life Insurance Act, having its registered office at _____

(vii) **Municipality** – Municipal Corporation of Delhi through its Chairman, Town Hall, Delhi.

(viii) **Minor** - AB S/o _____ Aged ___ a minor through his father and natural guardian S/o _____ Aged _____ Res. of _____

2. Body of the Plaint: Then follows the body of the suit/plaint. The plaintiff acquaints the court and defendant with the case. The statement of facts is divided into paragraphs numbered consecutively. As far as convenient a paragraph should contain only one allegation. Dates, time and numbers should be expressed in figures as well as in words. The body of plaint usually begins thus:

'The above named plaintiff states as follows:

1. That _____

   Mogha in 'The Law of Pleading in India has divided the body of the plaint into two parts (1) Substantive portion and (2) Formal portion.

   I. **Substantive portion** of the body of plaint is devoted to (i) statement of all facts constituting the cause of action and (ii) the facts showing the defendant's interest and liability. But, as already noted, often it is desirable to start the plaint with certain introductory statements, called 'matters of inducement'.

II. Formal portion of the plaint shall state the following essential particulars:

(i) Date when the cause of action arose;

(ii) Statement of facts pertaining to jurisdiction;

(iii) Statement as to valuation of the suit for the purpose of jurisdiction and court fees and it should be stated that the necessary court fee has been affixed to the plaint;

(iv) Statement as to minority or insanity of a party or if he is representing some other body then statement as to plaintiff's representative character;

(v) When a suit is filed after the expiry the period of limitation a statement showing the ground or grounds on which he has claimed exemption or condonation of delay in Limitation Law;

(vi) Every relief sought for by the plaintiff should be accurately worded. Rule 7 says that every plaint 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. The plaintiff can claim more than one relief, in the suit. He can seek reliefs alternatively. A plaintiff is entitled to claim more than one relief in respect of the same cause of action should sue for all of them because he is debarred from bringing a fresh suit in respect to the omitted relieves except when the omission in the first suit was with the permission of the court [Order 2, Rule 2 (3) of C.P.C.];

(vii) Signature and Verification: The plaint must be signed by the plaintiff through advocate. But if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it must be signed by any person duly authorized by him to sign the same. The verification is done by the plaintiff himself.

Verification

I _____ (Name), S/o Shri _____ (Father's name), the aforesaid plaintiff do hereby verify that the contents of paragraphs nos. _____ to _____ of the above plaint are true and correct within my personal knowledge and that the contents of paras _____ to_____ (mention the paras by their number in the pleading) I believed to be true on the basis of information received.

Signed and verified this at _____ (Place) on this _____ (Date) day of _____ month _____ years.

Sd/- (Plaintiff)

Note: Affidavit should also be enclosed with plaint as provided under Order VI Rule 15 (4) CPC, 1908. All documents on which the plaintiff relies for his claim should be enclosed with a separate List of Documents according to Order VII Rule 14 (1) CPC, 1908.

Format of Plaint

Suit for Ejectment and Arrears of Rent in the Court of Small Cause_____

Suit No. _____ Of _____

(Space for Court-fee Stamp)

AB S/o CD Age_____ Resident of _____ *Plaintiff*

Versus

PQ S/o RS Age_____Resident of _____ *Defendant*

Suit for Ejectment, Arrears of Rent and Mesne Profits

The above-named plaintiff states as follows: -

1. That the plaintiff is the owner of the house no. _____ Situated at _____ and bounded as below: -

   Boundaries of the Houses

   * * * * * * * * *

2. That under verbal agreement made on _____ the defendant became a monthly tenant to the plaintiff in respect to the house described in paragraph I above at the rent of Rupees _____ Per month and has been in occupation of the said house as such tenant since the above-mentioned date of the agreement.
3. That the defendant has not paid the rent from _____(date) or any part thereof.
4. That the plaintiff duly determined the said tenancy by serving on the defendant, by registered post on _____ a notice to quit the said house within thirty days of the receipt of the notice and pay the entire arrears of rent from _____. That the said notice was served upon the defendant on October _____ (date) yet the defendant has not vacated the house, nor has he paid the said arrears of rent or any part thereof. Hence the defendant is liable to Ejectment under section 20 of the U.P. Act No. XIII of 1971.
5. That now a total sum of Rupees _____ is due to the plaintiff as against the defendant, that is Rupees _____ on account of arrears of rent from _____ to _____, and Rupees _____ on account of damages for use and occupation from _____ to _____, the date of filing the suit.
6. That the cause of action for the said arose on _____ when the period stipulated in the said notice expired.
7. That the defendant resides at _____ within the jurisdiction of the court.
8. That the valuation of the suit for purpose of jurisdiction and payment of court-fee is Rupees_____, has been paid.

Wherefore the plaintiff claims –

a) That the decree for Ejectment of the defendant from the house described in paragraph 1 above be passed in favour of the plaintiff.

b) That the decree of Rupees on account of arrears of rent from _____ to _____ be passed in favour of the plaintiff.

c) That a decree for Rupees _____ on account of damages for use and occupation at the rate of Rupees _____ per month from _____, to _____, the date of suit, be passed in favour of the plaintiff as against the defendant.

d) That a decree for further damages for use and occupation at the aforesaid rate till the Ejectment of the defendant be passed in favour of the plaintiff as against the defendant on payment of additional court-fee.

e) That cost of the suit be allowed to the plaintiff.

Place: _____ *AB*

Date: _____ *Plaintiff*

Through Advocate

Verification

I, AB, the aforesaid, plaintiff, do hereby verify the contents of paragraphs _____ and_____ of the above plaint are true to my personal knowledge and the contents of the paragraphs _____ and_____, I believe to be true on information received.

Signed and verified this _____ day of _____ 20_____ at _____.

AB

Plaintiff

WRITTEN STATEMENT

A written statement is required to be filed by the defendant in answer to the claim made by the plaintiff in his plaint which is delivered to the defendant along with the summons to attend at the first hearing of the suit. Written statement is the statement or defence of the defendant by which he either admits the claim of the plaintiff or denies the allegations or averments made by the plaintiff in his plaint. The written statement must specifically deal with each allegation of fact in the plaint and when a defendant denies any fact, he must not do so evasively but answer the same in substance. Before proceeding to draft a written statement, it is always necessary for a pleader to examine the plaint very carefully and to see whether all the particulars are given in it and whether the whole information that he requires for fully understanding the claim and drawing up the defence is available. If any particulars are wanting, he should apply that the plaintiff be required to furnish them before the defendant files his written statement. If he cannot make a proper defence without going through such particulars and/ or such documents referred to in the plaint, and that the defendant is not in possession of such copies, or the copies do not serve the required purpose, the defendant should call upon the plaintiff to grant him inspection of them and to permit him to take copies, if necessary, or, if he thinks necessary, he may apply for discovery of documents. If he thinks any allegation/ allegations in the plaint are embarrassing or scandalous, he should apply to have it struck out, so that he may not be required to plead those allegations. If there are several defendants, they may file a joint defence, if they have the same defence to the claim. If their defences are different, they should file separate written statements, and if the defences are not only different but also conflicting, it is not proper for the same pleader to file the different written statements. For instance, if two defendants, executants of a bond, are sued on the bond, and their plea is one of satisfaction, they can file a joint written statement. If the plaintiff claims limitation from the date of certain acknowledgement made by one defendant and contends that the acknowledgement saves limitation against the other also, the defendants may file separate written statements. In a suit on a mortgage deed executed by a Hindu father, to which the sons are also made parties on the ground that the mortgage was for a legal necessity, if the sons want to deny the alleged legal necessity, they should not only file a separate defence from their father's but should also preferably engage a separate pleader.

(1) ***Formal Portion of Written Statement:*** A written statement should have the same heading and title as the plaint, except that, if there are several plaintiffs or several defendants, the name of only one may be written with the addition of "and another" or "and others", as the case may be. The number of the suit should also be mentioned after the name of the court. After the name of the parties and before the actual statement, there should be added some words to indicate whose statement it is, e.g., "written statement on behalf of all the defendants" or "written statement on behalf of defendant No. 1", or "written statement on behalf of the plaintiff in reply to defendant's claim for a set off" or "written statement (or replication) on behalf of the plaintiff filed under the order of the court, dated... " or "written statement on behalf of the plaintiff, filed with the leave of the court". The words "The defendant states_____" or "The defendant states as follows" may be used before the commencement of the various paragraph of the written statement but this is optional.

No relief should be claimed in the written statement, and even statements such as that the claim is liable to be dismissed should be avoided. But when a set off is pleaded or the defendant prefers a counter-claim for any excess amount due to him, a prayer for judgment for that amount in defendant's favour should be made.

(2) Body of the Written Statement: The rest of the written statement should be confined to the defence.

Forms of Defence: A defence may take the form of (i) a "traverse", as where a defendant totally and categorically denies the plaint allegation, or that of (ii) "a confession and avoidance" or "special defence", where he admits the allegations but seeks to destroy their effect by alleging affirmatively certain facts of his own, as where he admits the bond in suit but pleads that it has been paid up, or that the claim is barred by limitation, or that of (iii) "an objection in point of law" (which was formerly called in England "a demurrer"), e.g., that the plaint allegations do not disclose a cause of action, or that the special damages claimed are too remote. Another plea may sometimes be taken which merely delays the trial of a suit on merits, e.g., a plea that the hearing should be stayed under Section 10, C.P.C., or that the suit has not been properly framed, there being some defect in the joinder of parties or cause of action and the case cannot be decided until those defects are removed. These pleas are called (a) "dilatory pleas" in contradistinction to the other pleas which go to the root of the case and which are therefore known as (b) "peremptory pleas" or "pleas in bar". Some dilatory pleas are not permitted in pleadings, but must be taken by separate proceedings. Others may either be taken in the written statement under the heading "Preliminary Objections", or by a separate application filed at the earliest opportunity, as some pleas, such as that of a mis-joinder and non-joinder, cannot be permitted unless taken at the earliest opportunity (O. 1, R. 7 and 13).

A defendant may adopt one or more of the above forms of defence, and in fact he can take any number of different defences to the same action. For example, in a suit on a bond he can deny its execution, he can plead that the claim is barred by limitation, he can plead that, as no consideration of the bond is mentioned in the plaint, the plaint does not disclose any cause of action, he can plead that the bond being stated to be in favour of two persons the plaintiff alone cannot maintain the suit. He can as well plead one form of defence to one part of the claim, and another defence to another part of it. He can take such different defences either jointly or alternatively, even if such defences are inconsistent. But certain inconsistent pleas such as those which depend for their proof, on entirely contradictory facts, are generally not tenable. A ground of defence, which has arisen to the defendant even after the institution of the suit, but before the filing of his written statement, may also be raised (O.8, R.8).

All defences which are permissible should be taken in the first instance, for, if the defendant does not take any plea, he may not be allowed to advance it at a later stage, particularly when it involves a question of fact.

How to Draft a Written Statement

When the defendant relies on several distinct grounds of defence or set off, founded upon separate and distinct facts, they should be stated in separate paragraphs (O.8, R.7), and when a ground is applicable, not to the whole claim but only to a part of it, its statement should be prefaced by words showing distinctly that it is pleaded only to that part of the claim, thus: "As to the *mesne* profits claimed by the plaintiff, the defendant contends that, etc." or "As to the price of cloth said to have been purchased by the defendant, the defendant contends that, etc."

When it is intended to take several defences in the same written statement, the different kinds of defences should be separately written. It is convenient to adopt the following order for the several pleas:

(i) Denials: A defendant is said to take the defence of denial when he totally and categorically, denies the allegations contained in the plaint. It is also called 'traverse'. Admissions and denials of the material facts

alleged in the plaint should be given in the opening paragraphs of the body of the written statement. It may be emphasized that bare denials are in themselves valid defences to the claim made in the plaint.

Rules as to denials: a. Denials must be specific, b. Denials must not be evasive.

(ii) **Dilatory pleas**: Pleas which merely delay the trial of a suit on merits have been characterized as 'dilatory pleas'. They simply raise formal objections to the proceedings and do not give any substantial reply to the merits of the case, e.g., the plea that the court-fee paid by the plaintiff is not sufficient. Such pleas should be raised at the earliest opportunity.

(iii) **Objections to point of law**: By such an objection, the defendant means to say that even if the allegations of fact (made in the plaint) be supposed to be correct, still the legal inference which the plaintiff claims to draw in his favour from those facts is not permissible.

(iv) **Special defence** (confession and avoidance): Special defence is more appropriately called the plea of confession and avoidance. It is a plea whereby the defendant admits the allegations made in the plaint but seeks to destroy their effect by alleging affirmatively certain facts of his own, showing some justification or excuse of the matter charged against him or some discharge or release from it.

(v) **Set off and counter-claim**: According to Black's Law Dictionary set off is the defendant's counter demand against the plaintiff, arising out of a transaction independent of the plaintiff's claim. Where the plaintiff sues a defendant for the recovery of money the defendant can defend that suit and he can 'claim a set-off in respect of any claim of his own'. An analysis of sub-rule (1) of Rule 6 of Order VIII would reveal that a claim by way of a set-off is allowed in the following conditions:

a. the sum claimed must be ascertained sum of money,

b. it must be legally recoverable,

c. it must be recoverable by the defendant,

d. it must be recoverable from the plaintiff,

e. the sum claimed by the defendant must not exceed the pecuniary limits of the jurisdiction of the Court, both parties must fill the same character as they fill in the plaintiff's suit.

Set-off may be of two kinds: legal set-off and equitable set-off. Etymologically the counter claim is the claim made by the defendant against the averments made by the plaintiff in his plaint. Black's Law Dictionary defines it as a claim for relief asserted against an opposing party after an original claim has been made, especially a defendant's claim in opposition to or as a set-off against the plaintiff's claim. Counter claim must be treated as a plaint. It shall have the same effect as a cross suit so as to enable the Court to pronounce judgement in the same suit, both on the original claim and on the counter claim.

All admissions and denials of facts alleged in the plaint should be recorded in the first part of the written statement and before any other pleas are written. If a defendant wishes to add an affirmative statement of his own version to the denial of a plaint allegation, or to add anything in order to explain his admission or denial, it is better and more convenient to allege the additional facts along with the admissions or denial, than to reserve them until after the admissions or denials have been recorded. If there are some defences which are applicable to the whole case and others which apply only to a part of the claim, the former should preferably be pleaded before the latter.

Drafting of Reply/Written Statement – Important Considerations

At the time of drafting the reply or written statement, one has to keep the following points in mind:-

(i) One has to deny the averment of the plaint/petition which are incorrect, perverse or false. In case, averment contained in any para of the plaint are not denied specifically, it is presumed to have been admitted by the other party by virtue of the provisions of Order VIII, Rule 5 of the Code of Civil Procedure.

It must be borne in mind that the denial has to be specific and not evasive (Order VIII, Rule 3 & 4 CPC)

However, general allegation in the plaint cannot be said to be admitted because of general denial in written statement. [*Union* v. *A. Pandurang,* AIR 1962 SC 630.]

(ii) If the plaint has raised a point/issue which is otherwise not admitted by the opposite party in the correspondence exchanged, it is generally advisable to deny such point/issue and let the onus to prove that point be upon the complainant. In reply, one has to submit the facts which are in the nature of defence and to be presented in a concise manner. [*Syed Dastagir* v. *T.R. Gopalakrishnan Setty* 1999 (6) SCC 337.]

(iii) Attach relevant correspondence, invoice, challan, documents, extracts of books of accounts or relevant papers as annexures while reply is drafted to a particular para of the plaint;

(iv) The reply to each of the paras of the plaint be drafted and given in such a manner that no para of the plaint is left unattended. The pleadings are foundations of a case. [*Vinod Kumar* v. *Surjit Kumar,* AIR 1987 SC 2179.]

(v) After reply, the same is to be signed by the constituted attorney of the opposite party. If the opposite party is an individual, it could be signed by him or his constituted attorney or if the opposite party is a partnership firm, the same should be signed by a partner who is duly authorised under the Partnership Deed, because no partner has an implied authority to sign pleadings on behalf of the partnership firm by virtue of Section 22 of the Indian Partnership Act, 1932. In case of a body corporate, the same could be signed by any Director, Company Secretary, Vice-President, General Manger or Manager who is duly authorised by the Board of Directors of the company because any of the aforesaid persons *per se* are not entitled to sign pleadings on behalf of the body corporate. [Order XXIX of Code of Civil Procedure.]

It may be noted that if the plaint or reply is not filed by a duly authorised person, the petition would be liable to be dismissed [*Nibro Ltd* . v. *National Insurance Co. Ltd.,* AIR 1991 Delhi 25; *Raghuvir Paper Mills Ltd.* v. *India Securities Ltd.* 2000 Corporate Law Cases 1436]. However, at the time of filing of petition, if the pleadings are signed by a person not authorised, the same could be ratified subsequently. [*United Bank of India* v. *Naresh Kumar,* AIR 1997 SC 2.]

(vi) The reply/written statement is to be supported by an Affidavit of the opposite party. Likewise, the Affidavit will be sworn by any of the persons aforesaid and duly notarized by an Oath Commissioner. The Affidavit has to be properly drawn and if the affidavit is not properly drawn or attested, the same cannot be read and the petition could be dismissed summarily. [Order VI, Rule 15 CPC]. The court is bound to see in every case that the pleadings are verified in the manner prescribed and that verifications are not mere formalities.

(vii) The reply along with all annexures should be duly page numbered and be filed along with authority letter if not previously filed.

(viii) At the time of filing of reply, attach all the supporting papers, documents, documentary evidence, copies of annual accounts or its relevant extracts, invoices, extracts of registers, documents and other relevant papers.

(ix) It may be noted that if any of the important points is omitted from being given in the reply, it would be suicidal as there is a limited provision for amendment of pleadings as provided in Order VI, Rule 17 CPC, and also the same cannot be raised in the Affidavit-in-Evidence at the time of leading of evidence. Because if any point has not been pleaded in the pleadings, no evidence could be led on that point. General rule is that no pleadings, no evidence. [*Mrs. Om Prabha Jain* v. *Abnash Chand Jain,* AIR 1968 SC 1083; 1968 (3) SCR 111.]

(x) If a party is alleging fraud, undue influence or misrepresentation, general allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however, strong the language in which they are couched may be, and the same applies to undue influence or coercion. [*Afsar Shaikh* v. *Soleman Bibi,* AIR 1976, SC 163; 1976 (2) SCC 142]. While pleading against fraud or misrepresentation, party must state the requisite particulars in the pleadings. [*K Kanakarathnam* v. *P Perumal,* AIR 1994 Madras 247.]

(xi) It is well settled that neither party need in any pleadings allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied. [Order VI, Rule 13 CPC; Sections 79 and 90 of Indian Evidence Act.]

(xii) In every pleading, one must state specifically the relief which the party is claiming from the court or tribunal or forum. While framing the prayer clause, one should claim all possible relief as would be permissible under the pleadings and the law [Order VII, Rule 7 CPC]. The general principle is that the relief if not prayed for, will not be allowed. [*R Tiwary* v. *B Prasad,* AIR 2002 SC 136.]

Format of Written Statement

Suit for Ejectment and Arrears of Rent

In the Court of Small Cause _____

Suit No_____ of _____

(Space for Court-fee Stamp)

AB S/o CD Age_____ Resident of _____ *Plaintiff*

Versus

PQ S/o RS Age_____ Resident of _____ *Defendant*

Written Statement on behalf of the defendant to the suit for Ejectment, Arrears of Rent and *Mesne* Profits

The above-named defendant states as follows: -

1. That the defendant admits the facts stated in paragraph 1 of the plaint.
2. That the defendant admits the agreement mentioned in paragraph 2 of the plaint and his occupation of the said house as alleged therein.
3. That the defendant denies that he has not paid the rent from _____, as stated in paragraph 3 of the plaint.
4. That the defendant admits service of the notice alleged in paragraph 4 of the plaint, but does not admit that the plaintiff duly determined the defendant's tenancy thereby. That the defendant admits that he continues to be in occupation of the said house but denies that he has not paid any part of the said arrears of rent or that he is liable to Ejectment under the provisions of law alleged in paragraph 4 of the plaint.
5. That the defendant does not admit anyone of the several allegations made in paragraph 6 of the plaint.
6. That no cause of action even occurred to the plaintiff alleged in paragraph 6 of the plaint.
7. That the defendant admits the jurisdiction of the court as alleged in paragraph 7 of the plaint. However, it is submitted that the jurisdiction of this Hon'ble Court has been wrongly invoked by the plaintiff.
8. That paragraph 8 of the plaint relates to valuation of the suit and payment of court fee which is matter of record.

Additional Pleas

9. That the defendant has paid the rent for the months May, June, July, August and September, 20_____, to Shri EF, the plaintiff's authorized agent who has been collecting the rent of the said house on behalf of the plaintiff but no rent receipts in respect of the aforesaid months have been issued to the defendant even after repeated demands by the defendant.

10. That the rent for the October, 20_____, and that for the subsequent months was tendered to the said agent of the plaintiff and to the plaintiff himself but both have refused to accept it.

11. That in fact only Rupees _____, are due from the defendant to the plaintiff as arrears of the rent , being the rent for the months mentioned in paragraph 10 above and that the defendant is ready and willing to pay the said amount to the plaintiff herein before this Hon'ble Court.

12. That the notice mentioned in paragraph 4 of the plaintiff is invalid in that it did not purport to give sufficient period of time to the defendant as stipulated in section 30 of the U.P. Act No. XIII of 1972.

13. That there are absolutely no grounds for granting the relief prayed for by the plaintiff and the suit is liable to be dismissed with costs.

Place: _____ *PQ*

Date: _____ *Defendant*

Through Advocate

Verification

I, PQ, the aforesaid, defendant, do hereby verify the contents of paragraphs _____ and_____ of the above plaint are true to my personal knowledge and the contents of the paragraphs _____ and_____, I believe to be true on information received.

Signed and verified this _____ day of _____ 20_____, at _____

PQ

Defendant

Notice

There is no self-contained general law relating to notices laying down therein what exactly constitutes a notice. What should be at its essential contents, by whom and to whom it should be given and the manner in which it should be served. But in various laws where an appeal or revision or review is provided, invariably there will also be a provision to the effect that the person is likely to be affected should be put on notice before final orders are passed. But beyond that, the provisions do not elaborate in regard to the notice on the various aspects above mentioned. It has therefore become necessary to wade through the labyrinth of case law under various laws requiring notice to the party affected and particularly under section 3 and 106 for the transfer of property act 1882 which give rise to frequent litigation on the subject of notice. Notice is a subject of considerable importance and indeed its scope has become is becoming wider and wider for the simple reason that many cases are fought in court on this solitary issue that there was no notice or the notice given to the affected party was inadequate. The subject of notice falls under two categories. Firstly, the giving of notice by an individual to others before taking action which would affect the other person. Such a notice by an individual may require the other person to do a certain thing failing which legal action would be taken. For example, a notice under section 106 of the transfer of property act 1882 determine the lease and asking the lessee to vacate the premises falls under this category. Similarly, when a private person intends to proceed against the government or a public authority by filing a suit, a notice under section 80 of the CPC is an essential requisite so that the government

or public authority may, before the suit is filed redress the grievance of the private person and avoid litigation. A partner withdrawing from partnership giving a notice also falls under this category.

The object of notice under section 80 of CPC is to give the government or the public officer concerned an opportunity to reconsider the legal position and if that course is justified to make amends or settle the claim out of court. The contemplation of the notice under section 80 of CPC is to give to the concerned government and public officers opportunity to reconsider the legal position and to make amends or settle the claim if so advised without litigation. The legislative intention behind that section is that public money and time should not be wasted on unnecessary litigation and Government and public officer should be given a reasonable opportunity to examine the claims made against them lest they should be drawn into avoidable litigation. The purpose of law is advancement of justice.

A lease of the immovable property may be for agriculture purpose or for manufacturing purpose or residential purpose. The period of notice and the manner of its giving are governed by section 106 of the Transfer of Property Act. But this section applies only in the absence of a contract or local law or usage to the contrary. Essential requisites of notice is that it should be in writing and signed by the notice giver or by his authorised agent. Merely typing the name of the person who gives the notice is not sufficient. The notice should be definite and should state in unequivocal terms that the tenancy stands terminated from the specified therein.

NOTICE OF SUIT UNDER SECTION 80, C.P. CODE AGAINST A PUBLIC OFFICER OF A STATE GOVERNMENT

Registered with A/D

Dated:-

The _____20_____

To

_____
(Name and Official Designation)
P.O.
Date

Notice under section 80 of the code of civil procedure

Dear Sir

Please take notice that my client _____ son of_____ residing at _____ _____ intends to bring a suit against the (state here the office the intended defendant holds), a public officer of the government of (state the name of the province or simply of the government of India as the case may be) in a competent court of law on the cause of action stated herein-under and for reliefs appearing below :

Cause of action for the intended suit

(i) _____

(ii) _____ etc.

Reliefs sought for:

(i) _____

(ii) _____

Yours Faithfully

Advocate

Notice of Ejectment under section 106 of the Transfer of Property Act format

NOTICE OF EJECTMENT

THROUGH ADVOCATE

(SECTION 106 OF THE TRANSFER OF PROPERTY ACT, 1882)

Advocate Name _____

Address _____ Phone no. _____

REGD A/D / U.P.C.

Dated _____

To _____

Sub: NOTICE UNDER SECTION 106 OF THE TRANSFER OF PROPERTY ACT, 1882 FOR EJECTMENT

Dear Sir,

Under the instructions from and on behalf of my client Sh. _____ S/O _____ R/O _____ (hereinafter referred to as "my client"), I serve you with the following notice:

1. That the house bearing no. _____ situated at _____in _____city is owned by my client. That you approached my client and requested my client to give the said property on lease to you.
2. That my client has inducted you as the tenant in respect of the said property. That the agreed monthly rent for the said property is Rs _____ per month.
3. I hereby give you notice that you are to quit and vacate the said property below of which you are now in possession of as a monthly (or yearly) tenant under my said client immediately on the expiry of the last day of _____ 20XX.
4. On and from the _____ of _____ (month next following the last day of the month on which the tenant is required to quit) the tenancy hereto before subsisting shall terminate and all relationship of landlord and tenant between my client and you shall absolutely cease.
5. You are requested to deliver vacant possession of the said premises unto my client on that date as stated above.
6. In case of your failure to quit the premises as desired, you will be considered as a trespasser and ejected in due course of law and you will have to pay damages at rate of Rs. _____ per _____until you are evicted.

Yours faithfully

Advocate

PETITIONS

Original Petition

Suits are filed to lodge money claims in civil courts working under District Courts while petitions are filed in High Courts which are above District Courts seeking some directions against the opposite party; mostly the Government.

There is no legal term like original suit or original petition. Suit of a civil nature is ordinarily tried in civil court. Every person has a right to bring a suit of a civil nature and civil court has jurisdiction to try the suits of a civil nature. Due to increasing litigation and delays in civil suits, parliament and state legislative created special courts and Tribunals with special enactments. The reason behind this exercise is for speedy disposal of cases of various types. For ex. Cases of ejectment in respect of urban buildings between the landlord and tenant are now dealt with by special courts created under various state legislations. Railway accidents claims are decided by railway claim Tribunals, claims by Industrial woken for payment of wages are entrusted to prescribed authorities. So is the case with the workman's compensation claims. In some states and in center also service tribunal have been created for adjudication of cases of public servants in disputes arising out of their employment, including dismissal, terminator of service, etc. At many places family courts have been established to deal with matrimonial disputes. In such cases which are dealt with by special courts under special enactments the party aggrieved expected to approach such special courts or tribunal and the jurisdiction of the civil courts under section 9 CPC is barred. However, in practice, the words 'petitions' and 'suits' are generally used to mean formal applications for seeking legal remedy. The suit which is initially filed in the first court for the first time is referred as original suit. Petitions are Writ Petitions, Arbitration Petitions, Miscellaneous Petitions etc. & not the original petition.

After judgment in suit or petition, if any aggrieved party challenges it, then it is by filing appeal in the higher court which is ordinarily called as Appeal but often in some court it is termed as Letters Patent Appeal (LPA) & as Special Leave Petition (SLP) in Supreme Court.

Execution Petition

Application for Execution

Execution of decree

Application for execution of a decree shall be made by a holder of a decree who desires to execute it to the appropriate court which passed it or to the officer appointed in this behalf. In case the decree has been sent to another court than the application shall be made to such court or the proper officer thereof. Execution of an injunction decree is to be made in pursuance of the Order XXI Rule 32 CPC as the CPC provides a particular manner and mode of execution and therefore, no other mode is permissible.

Application for execution of a decree may be either (1) Oral; or (2) written.

(a) ***Oral Application:*** Where a decree is for payment of money the court may on the oral application of the decree holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgement debtor, prior to the preparation of a warrant if he is within precincts of the court.

(b) ***Written Application:*** Every application for the execution of a decree shall be in writing save as otherwise provided sub-rule (1) signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely :

(a) the No. of the suit;

(b) the name of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of costs (if any) awarded;

(i) the name of the person against whom execution of the decree sought; and

(j) the mode in which the assistance of the court is required, whether–

(i) by the delivery of any property specifically decreed;

(ii) by the attachment or by the attainment and sale, or by the sale without attachment, of any property;

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.

The court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree. Some High Courts in different States have framed additional rules in this regard may also be taken care by the draftsman or the executing lawyer.

SPECIAL LEAVE PETITION

In suitable cases, where some arguable questions, mostly on legal points are involved, the Constitution confers under Article 136 wide discretionary powers on the Supreme Court to entertain appeals even in cases where an appeal is not otherwise provided for. But so far as questions of fact, as distinct from questions of law, is concerned, it is only in rare or exceptional cases that the Supreme Court interferes and that too when finding of the High Court or the lower Court is such that it shocks the conscience of the court.

Specimen Form of a Petition for Special Leave

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (C) NO. _____ OF 20_____

(Arising out of the final judgment and order dated passed by the Hon'ble High Court of _____ in Writ Petition No. _____of 20_____)

Position of Parties

_____ In High Court _____ In Supreme Court

ABC _____ _____ Petitioner

Versus

Government of _____ _____ *Respondent*

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICES OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION ON BEHALF OF THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The present Special Leave Petition has been filed under Article 136 of the Constitution of India against the judgment and final order dated _____ passed by the Division Bench of Hon'ble High Court of _____ in Writ Petition No. _____ of _____ whereby the petition filed by the petitioner herein was dismissed.

2. **QUESTIONS OF LAW**

   A. Whether the land acquisition of land of the petitioner by the respondent is for a Private Company or for a public purpose.

   B. Whether the acquisition is *malafide* being in colourable exercise of power and fraud on the statute and in sheer abuse of power of eminent domain.

3. **DECLARATION IN TERMS OF RULE 3(2)**

   That no other Petition seeking leave to Appeal has been filed by the Petitioner against the final judgment and order dated _____ passed by the Ld. Division Bench of High Court of _____ in Writ Petition No. _____ of _____.

4. **DECLARATION IN TERMS OF RULE 5**

   That the Annexures filed with the Present Petition are true copies of the pleadings/ documents forming part of the records before courts below.

5. **GROUNDS**

   That the present special leave to Appeal is being filed on the following, amongst other, grounds without prejudice to each other; i. Because the Division Bench of the Hon'ble High Court failed to appreciate that the procedure for acquiring land for a public purpose cannot be adopted for acquiring land for a private company. The acquisition in the instant case was clearly an acquisition for a private company and the respondent State had undertaken a colourable exercise of power by stating it to be an acquisition for a public purpose.

6. **GROUNDS FOR INTERIM RELIEF**

   That the Petitioner has a good case on merits and that there are fair chances of success in the matter before this Hon'ble Court. The acquisition in the instant case was clearly an acquisition for a private company and the State had undertaken a colourable exercise of power by stating it to be an acquisition for a public purpose. If no stay is granted then that would cause serious prejudice to the petitioner.

7. **MAIN PRAYERS**

   In view of the facts and circumstances as mentioned above, it is most humbly prayed that this Hon'ble Court may graciously be pleased to:

   i. Grant Special Leave to Appeal against the order passed by the Division Bench of the Hon'ble High Court of _____in Writ Petition No. _____ of _____titled as _____

   ii. Pass such other or any further order(s) as may be deemed fit and appropriate by this Hon'ble Court in the facts and circumstances of the present case.

8. **INTERIM PRAYER**

   It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to:

   a) stay the impugned judgment dated _____ passed by the Division Bench of the

Hon'ble High Court of _____ in Writ Petition No. _____ of _____, titled_____.

b) pass such other and further orders as this Hon'ble Court may deem fit and proper in the interests of justice.

FILED BY: _____

Advocate for the petitioner

Drawn By: .....

Drawn on: .....

Filed on: .....

New Delhi

AFFIDAVIT

IN THE HON'BLE SUPREME COURT OF INDIA

IN THE MATTER OF:_____

_____ ..... Petitioner

Versus

_____ .....Respondent

I, _____ s/o_____ Aged_____ yrs R/o _____ the petitioner in the Special Leave Petition titled as above do hereby solemnly affirm and state as under:

1. That I am the petitioner and am fully aware of and conversant with the relevants facts concerning the matter in issue in this petition.
2. That the contents of the accompanying Special Leave Petition are true and correct to the best of my knowledge and belief.
3. That no relevant fact has been concealed or kept back in the S.L.P. _____.

I, further solemnly affirm at_____ (place) this the_____ day of _____. 20____ that the above averments are true and correct. Nothing has been concealed therefrom.

DEPONENT

REVISION

Revision is not a continuation of the suit, but is altogether a separate proceeding. Hence a fresh *vakalatnama* would be necessary to enable the advocate to file the petition for revision. Section 115 of the Code of Civil Procedure, 1908, deals with revisionary jurisdiction of the High Courts. The Section lays down:

"(1) The High Court may call for the record of any case which has been decided by any Court sub-ordinate to such High Court and in which no appeal lies thereto, and if such sub-ordinate Court appears:

(a) to have exercised a jurisdiction not vested in it by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under the Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where:

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding; or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) The High Court shall not, under this Section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto."

Section 115 of the Code of Civil Procedure, 1908 provides for the remedy of revision. In a case where an appeal does not lie against a final order the aggrieved party can file a revision before the High Court (and no other court). There are certain orders passed by the Civil Courts subordinate to the High Court against which the remedy of appeal is not available, even though such orders finally decide an important question involved in the suit or substantially affect the right or interest of a party to the suit. In such cases the High Court can entertain a revision and quash or modify the order of the court below.

SPECIMEN FORM OF REVISION

In the High Court of_____

Civil Appellate Jurisdiction

Civil Revision No_____ of 20_____

IN THE MATTER OF:

ABC S/o_____R/o_____ *Petitioner*

Versus

XYZ S/o_____R/o_____ *Respondent*

AND

IN THE MATTER OF:

CIVIL REVISION AGAINST THE ORDER DATED _____PASSED BY THE LEARNED SUB-JUDGE, IST CLASS _____ IN THE SUIT ENTITLED ABC -VS.- XYZ (CIVIL SUIT NO_____OF 2013)

May it please the Hon'ble Chief Justice, High Court of_____ and his companion Justices.

The petitioner most respectfully showeth:

A. That the petitioner named above has filed a suit against the respondents for the recovery of possession of a house situated in_____, fully described in the plaint. The suit is pending in the court of Sub- Judge Ist Class_____ and the next date of hearing is_____.

B. That on being summoned the respondent appeared before the court below and filed his written statement wherein he denied the petitioner's title set up in the suit property.

C. That the trial court framed issues on _____ and directed the petitioner (plaintiff) to produce evidence, upon which the petitioner promptly furnished to the court below a list of witnesses

and also deposited their diet expenses etc., making a request that the witness be summoned by that Court.

D. That on a previous date of hearing that is _____, 20_____, two witnesses of the petitioner had appeared, and their statements were recorded. However, the learned Presiding Officer of the court below passed an order that the remaining witnesses be produced by the petitioner-plaintiff on his own without seeking the assistance of the court. This order was passed despite a request by the petitioner that at least those witnesses named in the list who are State employees should be summoned by the court, as they are required to produce and prove some official records.

E. That on the next date of hearing the learned trial court by the order impugned in this revision closed the evidence of the petitioner-plaintiff on the ground that the remaining witnesses were not produced by him.

F. That the impugned order has caused great prejudice to the petitioner and if the same is allowed to stand the petitioner's suit is bound to fail.

G. That the trial court has unjustifiably denied assistance of the court to the petitioner-plaintiff to secure the attendance of his witnesses. The interests of justice demand that he is provided with all legal assistance in this regard.

In the facts and circumstances discussed above the petitioner prays that this Hon'ble Court be pleased to quash and set aside the order under revision and direct the court below to provide assistance of the court for summoning the plaintiff-witnesses.

PETITIONER

[*Affidavit to be filed in support of the fact that the contents of the accompanying revision petition are true and correct to the best of the deponent's knowledge and that nothing has been kept back or concealed*].

Criminal Miscellaneous Petition

The Criminal Miscellaneous Petitions are one of the important tasks of the Judge in the Criminal Court. The filing of Criminal Miscellaneous Petition will start even before registering the case by way of anticipatory bail application. According to Oxford Dictionary meaning, "Miscellaneous" means consisting of mixture of various things that are not usually connected with each other. When a petition is filed seeking interim relief, it is registered as miscellaneous petition. A Memo filed before the Court of Law need not be treated as Petition. The main difference between Petition and Memo is that Memo is nothing but bringing a fact to notice before a Court of Law and no relief can be sought for in a Memo and notice to the opposite party is not required. However, where a Petition is filed requiring some relief from the court, a notice to opposite party is mandatory in most of the cases. No order be passed on Memo (Held in a decision held in between *Syed Yousuf Ali Vs. Mohd. Yousuf and Others reported in 2016 (3) ALD 235*)

In nutshell it can be called a Petition other than a main case. When a Miscellaneous Petition is filed in Criminal cases, it is registered as Criminal Miscellaneous Petition. As soon as a Petition is filed, primary duty of the Court is to see whether the relief sought is provided under Criminal Procedure Code or not. If it is provided, the Petition shall be called in Public Court by assigning a particular miscellaneous number and notices shall be ordered to the opposite party. Having heard both the parties, a speaking order has to be pronounced. In day to day, Criminal Courts come across several Miscellaneous Petitions seeking different reliefs.

The petitions under section 268, section 250, section 348, section 358 and also under section 93, section 94 and section 144(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

Memorandum of Appeal

Although "Appeal" has not been defined in the Code of Civil Procedure, 1908 yet any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court is an "appeal". A right of appeal is not a natural or inherent right but is a creature of a statute. It is the statute alone to which the Court must look to determine whether a right of appeal exists in a particular instance or not. Parties cannot create a right of appeal by agreement or mutual consent. The right of appeal is not a matter of procedure, but is a substantive right and can be taken away only by a subsequent enactment, if it says so expressly or by necessary intendment and not otherwise. It is for the appellant to show that the statute gives a right of appeal to him. Appeal from original degree is known as first appeal. Second appeal means the appeal from the decree or judgement from the appellate Court. Second appeal only lies to the High Court. First appeal lies to any appellate Court. First appeal lies on the ground of question of law as well as question of facts. Second appeal can only lie on the ground of substantial question of law. Memorandum of appeal contains the grounds on which the judicial examination is invited. A memorandum of appeal is meant to be a succinct statement of the grounds upon which the appellant proposes to support the appeal. It is a notice to the Court that such specific grounds are proposed to be urged on behalf of the appellant, as also a notice to the respondent that he should be ready to meet those specific grounds. The theory of an appeal is that the suit is continued in the Court of appeal and re-heard there. An appeal is essentially a continuation of the original proceedings.

Appeal	***Revision***
An appeal is a complaint to a superior court of an injustice done or error committed by an inferior court with a view to its correction or reversal.	In a case where an appeal does not lie against a final order, the aggrieved party can file a revision before the High Court (an no other court).

In *Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad & Ors., (1999) 4 SCC 468*, the apex Court held that the right of appeal though statutory, can be conditional/qualified and such a law cannot be held to be violative of Article 14 of the Constitution. An appeal cannot be filed unless so provided for under the statute and when a law authorizes filing of an appeal, it can impose conditions as well.

Thus, it is evident from the above that the right to appeal is a creation of Statute and it cannot be created by acquiescence of the parties or by the order of the Court. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a Court or Authority with jurisdiction, is a legislative function. Thus, being a substantive statutory right, it has to be regulated in accordance with the law in force, ensuring full compliance of the conditions mentioned in the provision that creates it.

The Code of Civil Procedure, 1908 provides for four kinds of appeals:

(1) Appeals from original decrees (Sections 96 to 99 and Order XLI);

(2) Second Appeals (Sections 100 to 103, Order XLII);

(3) Appeals from Orders (Sections 104 to 106, Order XLIII, Rules 1 and 2); and

(4) Appeals to the Supreme Court (Sections 109 & 112, Order XLV).

(1) Appeals from original decrees may be preferred from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court on points of law as well as on facts.

(2) Second Appeals lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

Under Section 100 to the Civil Procedure Code, an appeal may lie from an appellate decree passed *ex parte*. The memorandum of appeal shall precisely state the substantial question of law involved in the appeal. The High Court, if satisfied, that a substantial question of law is involved, shall formulate that question. The appeal shall be heard on question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question. An application which was dismissed on the application of the appellant himself that he wished to withdraw, it cannot be restored even if he was acting under a misapprehension or a mistake of law (*Ram Lal Sahu v Dina Nath AIR 1942 Oudh 50*).

In the second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal:

(a) which has not been determined by the Lower Appellate Court or both by the Court of first instance and the Lower Appellate Court, or

(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred in Section 100 of the Code (Section 103).

(3) Appeals from, Orders under Sections 104 to 106 would lie only from the following Orders on grounds of defect or irregularity of law:

(a) An Order under Section 35A of the Code allowing special costs;

(b) An Order under Section 91 or Section 92 refusing leave to institute a suit;

(c) An Order under Section 95 for compensation for obtaining arrest, attachment or injunction on insufficient ground;

(d) An Order under the Code imposing a fine or directing the detention or arrest of any person except in execution of a decree; and

(e) Appealable Orders as set out under Order XLIII, Rule 1.

(4) Appeals to the Supreme Court, the highest Court of Appeal, lie in the following cases :

(1) Section 109 of the Code of Civil Procedure, 1908 provides:

"Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgement, decree or final order in a civil proceeding of a High Court, if the High Court certifies:

(i) that the case involves a substantial question of law of general importance; and

(ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court."

Order XLV of the Code of Civil Procedure, 1908 provides rules of procedure in appeals to the Supreme Court.

(2) Articles 132 to 135 of the Constitution deal with ordinary appeals to the Supreme Court:

(i) Appeals in Constitutional cases: Clause (1) of the Article 132 of the Constitution provides that an appeal shall lie to the Supreme Court from any judgement, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceedings, if the High Court certifies under Article 134A that the case involves a substantial question of law as to interpretation of the Constitution.

(ii) ***Appeals in civil cases:*** Article 133 deals with appeals to the Supreme Court from decisions of High Court in civil proceedings. For an appeal to the Supreme Court the conditions laid down in this article must be fulfilled.

These conditions are:

(a) the decision appealed against must be a "judgement, decree or final order" of a High Court in the territory of India,

(b) such judgement, decree or final order should be given in a civil proceeding, and

(c) a certificate of the High Court to the effect that (i) the case involves a substantial question of law, and (ii) in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(iii) ***Appeals in criminal cases:*** A limited criminal appellate jurisdiction is conferred upon the Supreme Court by Article 134. It is limited in the sense that the Supreme Court has been constituted a Court of criminal appeal in exceptional cases where the demand of justice requires interference by the highest Court of the land.

There are two modes by which a criminal appeal from any "judgement, final order or sentence" in a criminal proceeding of a High Court can be brought before the Supreme Court:

(1) Without a certificate of the High Court.

(2) With a certificate of the High Court.

(3) Appeal by Special Leave.

In appeals, as a general rule, the parties to an appeal are not entitled to produce additional evidence, whether oral or documentary, but the Appellate Court has discretion to allow additional evidence in the following circumstances:

(i) When the lower Court has refused to admit evidence which ought to have been admitted;

(ii) When the party seeking to produce additional evidence establishes that he could not produce it in its trial Court for no fault of his;

(iii) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgement; and

(iv) For any other substantial cause.

However, in all such cases the Appellate Court shall record its reasons for admission of additional evidence.

The appellate judgement must include the following essential factors:

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled to.

Drafting of Appeals

An appeal may be divided into three parts:

(1) formal part, known as the memorandum of appeal,

(2) material part, grounds of appeal, and

(3) relief sought for.

The memorandum of appeal should begin with the name of the Court in which it is filed. After the name of the Court, number of the appeal and the year in which it is filed are given. As the number is noted by the officials of the Court, a blank space is left for it. Then follow the names and addresses of the parties to the appeal. The name of the appellant is given first and then that of the respondent. It should be indicated against the names of the parties as to what character each party had in the lower Court, i.e., whether he was a plaintiff or a defendant, or an applicant or an opposite party, as:

A.B., son of etc. *(Plaintiff) Appellant*

Versus

C.D., son of etc. *(Defendant) Respondent*

Or

A.B., son of etc. *(Decree-holder) Appellant*

Versus

C.D., son of etc. *(Judgement-debtor) Respondent*

After the names of the parties, an introductory statement giving the particulars of the decree or order appealed from (viz., the number and date, the court which passed it, and the name of the presiding officer), should be written in some such form as:

"The above-named appellant appeals to the Court of_____ from the decree of_____ Civil Judge

At _____ in Suit No_____ passed on the_____ and sets forth the following grounds of objections to the decree appealed from, namely". This may also be written in the form of a heading as:

"Appeal from the decree of _____ Civil Judge of _____ at _____ in Suit No _____ passed on the_____".

Thereafter, the grounds of appeal be given under the heading "Grounds of Appeal". The grounds of appeal are the grounds on which the decree or the order appealed from is objected to or attacked. As a general rule, in the grounds of appeal, the following points may be raised:

(a) any mistake committed by the lower Court in weighing the evidence;

(b) any mistake in the view of law entertained by the lower Court;

(c) any misapplication of law to the facts of the case;

(d) any material irregularity committed in the trial of the case;

(e) any substantial error or defect or procedure;

(f) and the defect, error or irregularity of any *interlocutory* order passed in the case, whether the same was appealable or not.

A ground taken but not pressed in the first Appellate Court cannot be revived in second appeal. A defendant can question the propriety of *ex parte* proceedings in an appeal from the decree.

The general rule, besides being subject to Section 100 of the Civil Procedure Code, is also subject to two conditions:

(1) that the mistake of the lower Court should be material i.e., it should be such as affects the decision, and

(2) that the objection taken must be such as arises from the pleadings and evidence in the lower Court.

Drafting Grounds of Appeals

(i) Grounds of objection should be written distinctly and specifically;

(ii) They should be written concisely;

(iii) They must not be framed in a narrative or argumentative form; and

(iv) Each distinct objection should be stated in a separate ground and the grounds should be numbered consecutively.

These rules are simple but are most important and must be carefully remembered and observed while drafting Grounds of Appeal.

Relief Sought in Appeal

It is nowhere expressly provided in the Code that the relief sought in appeal should be stated in the memorandum of appeal. The absence of prayer for relief in appeal does not appear to be fatal and the Court is bound to exercise its powers under Section 107 of the Code and to give to the appellant such relief as it thinks proper. However, it is an established practice to mention in the memorandum of appeal, the relief sought by the appellant.

Signature

A memorandum of appeal need not be signed by the appellant himself. It may be signed by him or by his counsel but if there are several appellants and they have no counsel, it must be signed by all of them. It is not required to be verified.

Specimen Form of Appeal to the High Court

IN THE HIGH COURT OF_____AT_____

CIVIL APPELLATE JURISDICTION

REGULAR CIVIL APPEAL NO_____OF

IN THE MATTER OF:

A.B.C. Company Ltd. a company incorporated under the provisions of the Companies Act and having its registered office at _____

Appellant

Versus

M/s_____ a partnership concern (or XYZ company Ltd., a company incorporated under the Companies Act and having its registered office at _____

Respondents

May it please the Hon'ble Chief Justice of the High Court of_____ and his Lordship's Companion Justices,

The appellant-company

MOST RESPECTFULLY SHOWETH:

1. That the appellant herein is a company duly registered under the provisions of the Companies Act, 2013 and the registered office of the appellant is at _____ and the company is engaged in the business of manufacturing of _____.

2. That the respondents who are also doing business of selling goods manufactured by the appellants and other manufacturers approached the appellant for purchasing from the appellant-company the aforesaid manufactured goods. An agreement was reached between the parties which were reducing into writing. The appellant supplied goods worth Rs. _____ lacs over a period of _____ months to the respondents.

   A statement of account regarding the goods so supplied is annexed hereto and marked as *ANNEXURE A-1*.

3. That the respondents have made a total payment of Rs. _____ lacs on different dates. The statement of the said payments made by the respondents is appended and is marked as *ANNEXURE A-2*.

4. That the remaining amount has not been paid by the respondent despite repeated demands and issuance of a legal notice by the appellant through advocate.

5. That the appellant filed a suit for recovery of the aforesaid balance amount of Rs. _____ lacs together with interest at the rate of 12% per annum and the cost of the suit. The suit was filed on _____ in the court of the learned District Judge.

6. That upon being summoned by the said court the respondents appeared through counsel and filed their written statement to which appellant-plaintiff also filed replication.

7. That the parties led evidence. After hearing the counsel for the parties, the learned District Judge has by his judgement and decree passed on_____ dismissed the appellant's suit on the ground that the evidence led by the parties does not establish the claim of the appellant-plaintiff. Copies of the judgement and decree of the court below are annexed hereto and are marked as *ANNEXURE A-3 AND A-4*, respectively.

   Aggrieved by the aforesaid judgement and decree of the court below dismissing the suit of the plaintiff, this appeal is hereby filed on the following, amongst other,

GROUNDS

A. That the judgement and decree under appeal are erroneous both on facts as well as law.

B. That the learned trial court has failed to properly appreciate the evidence, and has fallen into error in not finding that the preponderance of probability was in favour of the plaintiff-appellant.

C. That there was sufficient evidence led by the plaintiff to prove the issues raised in the suit and the defendant-respondent has failed to effectively rebut the plaintiff's evidence, more particularly the documentary evidence.

D. _____

E. _____

F. _____

8. That the valuation of this appeal for the purposes of payment of court-fee is fixed at Rs. _____ and the requisite court fee is appended to this memorandum of appeal.
9. That this appeal is being filed within the prescribed period of limitation, the judgement and decree under appeal having been passed on _____.

In the above facts and circumstances the appellant prays that this appeal be allowed, the judgement and decree under appeal be set aside and the decree prayed for by the appellant in his suit before the court below be passed together with up-to-date interest and costs of both courts.

APPELLANT

(_____)

THROUGH

(_____)

Advocate

VERIFICATION

Verified at_____ on this, the_____day of_____, 20_____that the contents of the above appeal are correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

APPELLANT

WRIT PETITION

The Supreme Court and High Courts are authorized to issue five types of writs, under Articles 32 and 226 respectively. In fact, under Article 32, the Supreme Court can empower any other Court to issue the writs. But there has been no provision made so far by the court of law therefore to date only the Supreme Court and the High Courts can issue the writs. Earlier the High court of Bombay Madras and Calcutta had the power of issuing these writs, but after 1950 under Article 226 of the Constitution of India all the high courts were eligible to issue the writs. The concept of writs has been taken from England where it is known as prerogative writs. In England, the writs were issued in the exercise of the prerogative of the king who is still considered the Fountain of Justice. Later on, the High courts started to issue the writs as an extraordinary remedy to uphold the liberties of the Britishers.

Writs in Indian Constitution are filed according to Article 32 and Article 226. Before we proceed, it is important to learn about writs under Article 32 and 226 in detail.

	Writ under Article 32	***Writ under Article 226***
Type of Rights	Article 32 is a fundamental right.	Article 226 is a constitutional right.
Suspension of Articles	Article 32 can be suspended if the President declares an emergency.	Article 226 cannot be suspended even during an emergency.
Scope	Article 32 has a limited reach since it only applies when a fundamental right has been violated.	Article 226 on the other hand, has a greater reach since it applies not only to violations of fundamental rights but also to violations of legal rights.

	Writ under Article 32	*Writ under Article 226*
Territorial jurisdiction	Under Article 32, the Supreme Court has the authority to issue writs across India. As a result, the Supreme Court's territorial jurisdiction is broader and expanded.	Article 226, on the other hand, allows the High Court to issue a writ exclusively in its own local jurisdiction. As a result, the territorial authority of High Courts is narrower and limited.
Dismissal	Since Article 32 is a basic right, the Supreme Court cannot dismiss it.	Article 226 gives the High Court discretionary power, which means it is up to the High Court to decide whether or not to issue a writ.

Types of Writs

The Supreme Court and high court of India are empowered to protect the fundamental rights of citizens of India. For this, they can issue five types of writs to enforce the fundamental rights of the people of India. These five writs are explained below-

1. Habeas Corpus
2. Certiorari
3. Mandamus
4. Prohibition and
5. Quo-warranto.

1. **Habeas Corpus:** The writ of habeas corpus is a remedy available to a person who is confined without legal justification. The words "Habeas Corpus" literally mean "to have a body". This is an order to let the Court know on what ground he has been confined and to set him free if there is no legal justification for his detention. This writ has to be obeyed by the detaining authority by production of the person before the Court. Under Articles 32 and 226 of the Constitution, any person may move the Supreme Court and the High Court of competent jurisdiction respectively, for the issue of this writ. The applicant may be the prisoner himself moving the Court or any other person may move the Court on his behalf to secure his liberty praying for the issue of the writ of habeas corpus. No person can be punished or deprived of his personal liberty except for violation of any law and in accordance with the due process of law. Dis-obedience to the writ of habeas corpus attracts punishment for contempt of Court under the Contempt of Courts Act, 1971.

2. **Mandamus:** The expression "mandamus" means a command. The writ of mandamus is, thus, a command issued to direct any person, corporation, inferior Court or Government authority requiring him to do a particular thing therein specified which pertains to his or their office and is further in the nature of a public duty. This writ is used when the inferior tribunal has declined to exercise jurisdiction. Mandamus can be issued against any public authority. The applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed. Mandamus is not issued if the public authority has a discretion.

   Mandamus can be issued by the Supreme Court and all the High Courts to all authorities. However, it does not lie against the President of India or the Governor of a State for the exercise of their duties and powers (Article 360). It also does not lie against a private individual or body except where the State is in collusion with such private party in the matter of contravention of any provision of the Constitution or of a Statute. It is a discretionary remedy and the Court may refuse if alternative remedy exists except in case of infringement of Fundamental Rights.

3. **Prohibition:** The writ of prohibition is issued by the Supreme Court or any High Court to an inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it. It compels courts to act within their jurisdiction when a tribunal acts without or in excess of jurisdiction or in violation of rules or law.

   The writ of prohibition is available only against judicial or quasi-judicial authorities and is not available against a public officer who is not vested with judicial functions. If abuse of power is apparent this writ may be prayed for as a matter of right and not a matter of discretion. The Supreme Court may issue this writ only in case of Fundamental Rights being affected by reason of the jurisdictional defect in the proceedings. This writ is available during the pendancy of the proceedings and before the order is made.

4. **Certiorari:** The writ of certiorari is available to any person whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, acts in excess of its legal authority. The writ removes the proceedings from such body to the High Court in order to quash a decision that goes beyond the jurisdiction of the deciding authority.

5. **Quo warranto:** The writ of quo warranto is prayed, for an inquiry into the legality of the claim which a person asserts to an office or franchise and to oust him from such position if he is an usurper. The holder of the office has to show to the Court under what authority he holds the office. This writ is issued when:

   (i) the office is of a public and of a substantive nature;

   (ii) the office is created by a Statute or by the Constitution itself; and

   (iii) the respondent must have asserted his claim to the office. It can issue even though he has not assumed charge of the office.

   The fundamental basis of the proceedings of quo warranto is that the public has an interest to see that no unauthorised person usurps a public office. It is a discretionary remedy which the Court may grant or refuse. When an applicant challenges the validity of an appointment to a public office, it is maintainable whether or not any fundamental or other legal right of such person has been infringed. This writ is intended to safeguard against the usurpation of public offices

SPECIMEN FORM OF WRIT PETITION

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

IN

CIVIL MISC. WRIT PETITION (P.I.L) NO. _____ OF 2020

(PETITION UNDER ARTICLE _____ OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF _____ UNDER ARTICLE _____ OF THE CONSTITUTION OF INDIA.)

District- _____

_____ Petitioner

versus

_____ Respondents

To,

Hon'ble the Chief Justice of India and His Lordship's Companion Justices of the Supreme Court of India. The Humble petition of the Petitioner abovenamed.

MOST RESPECTFULLY SHEWETH:

1. Facts of the case
2. Question(s) of Law
3. Grounds
4. Averment: -

   That the present petitioner has not filed any other petition in any High Court or the Supreme Court of India on the subject matter of the present petition.

PRAYER

In the above premises, it is prayed that this Hon'ble Court may be pleased:

(i) _____

(ii) to pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case.

FOR WHICH ACT OF KINDNESS, THE PETITIONER SHALL AS IN DUTY BOUND, EVER PRAY.

FILED BY:

PETITIONER-IN-PERSON

DRAWN:

FILED ON:

The Writ Petition should be accompanied by:

(i) Affidavit of the petitioner duly sworn.

(ii) Annexures as referred to in the Writ Petition.

(iii) Court fee of Rs_____ per petitioner (In Crl. Matter no court fee is payable)

(iv) Index (As per Specimen enclosed)

(v) Cover page

(vi) Any application to be filed, Rs _____ per application.

(vii) Memo of Appearance.

(viii) Application seeking permission to appear and argue in person (in case of petition filed by petitioner-in-person), Court fee _____

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Sl. No.	***PARTICULARS***	***PAGES***
1.	Synopsis and List of Dates	
2.	Writ Petition alongwith Affidavit in support	
3.	Annexures	
4.	Application if any	

Affidavit

An affidavit is a sworn statement in writing made especially under oath before an authorized officer. Therefore, great care is required in drafting it. A Court may, at any time, for sufficient reason order that any particular fact or facts may be proved by affidavit or that the affidavit of any particular witness may be read at the hearing, provided that the Court may order the deponent to appear in person in Court for cross-examination [Order XIX Rule 2(1)].

Affidavits to be produced in a Court must strictly conform to the provisions of order XIX, Rule 1 of the Code of Civil Procedure, 1908 and in the verification it must be specified as to which portions are being sworn on the basis of personal knowledge and which, on the basis of information received and believed to be true. In the latter case, the source of information must also be disclosed. Order XIX Rule 3 provides that affidavit should be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory application, on which statements on his belief may be admitted; provided that the grounds of such belief are stated. The following rules should be remembered when drawing up an affidavit:

(1) Not a single allegation more than is absolutely necessary should be inserted;

(2) The person making the affidavit should be fully described in the affidavit;

(3) An affidavit should be drawn up in the first person;

(4) An affidavit should be divided into paragraphs, numbered consecutively, and as far as possible, each paragraph should be confined to a distinct portion of the subject (Order XIX Rule 5);

(5) Every person or place referred to in the affidavit should be correctly and fully described, so that he or it can be easily identified;

(6) When the declarant speaks of any fact within his knowledge he must do so directly and positively using the words “I affirm” or “I make oath and say”;

(7) Affidavit should generally be confined to matters within the personal knowledge of the declarant, and if any fact is within the personal knowledge any other person and the petitioner can secure his affidavit about it, he should have it filed. But in interlocutory proceedings, he is also permitted to verify facts on information received, using the words “I am informed by so and so” before every allegation which is so verified. If the declarant believes the information to be true, he must add “and I believe it to be true” or “I make oath and say” (Order XIX Rule 8).

(8) When the application or opposition thereto rests on facts disclosed in documents or copies, the declarant should state what is the source from which they were produced, and his information and belief as to the truth of facts disclosed in such documents;

(9) The affidavit should have the following oath or affirmation written out at the end:

“I swear that this my declaration is true, that it conceals nothing, and that no part of it is false”.

or

“I solemnly affirm that this my declaration is true, that it conceals nothing and that no part of it is false”. Any alterations in the affidavit must be authenticated by the officer before whom it is sworn. An affidavit has to be drawn on a non-judicial Stamp Paper as applicable in the State where it is drawn and sworn.

An affidavit shall be authenticated by the deponent in the presence of an Oath Commissioner, Notary Public, Magistrate or any other authority appointed by the Government for the purpose.

(10) Affidavits are chargeable with stamp duty under Article 4, Schedule I, Stamp Act, 1899. But no stamp duty is charged on affidavits filed or used in Courts. Such affidavits are liable to payment of Court fee prescribed for the various Courts.

Specimen Affidavit of Creditor in proof of his debt in Proceeding for the Liquidation of a Company

IN THE (HIGH) COURT OF_____

In the matter of Companies Act, 2013

And

The matter of the liquidation of_____ Company Limited.

I, A.B., aged_____ years, son of Shri _____ resident of_____, do hereby on oath (or on solemn affirmation) state as follows:

1. That the above-named company was on the_____ day of_____, 20_____, the date of the order for winding up the same, and still is justly and truly indebted to me in the sum of Rupees _____ (Rs_____) only in account of (describe briefly the nature of the debt).
2. That in proof of the aforesaid debt I attach hereto the documents marked A, B and C.
3. That I have not, nor have any person or persons by my order or to my knowledge or belief for my use, received the aforesaid sum of Rupees _____ or any part thereof, or any security or satisfaction for the same or any part thereof except the sum or security (state the exact amount of security).
4. That this my affidavit is true and, that it conceals nothing and no part of it is false.

Dated

Sd/- A.B.

Deponent

Verification

I, the abovenamed deponent, verify that the contents of paragraphs 1 to 4 of this affidavit are true to my personal knowledge.

Sd/- A.B.

Dated_____

I,_____S/o _____ R/o _____ declare, from a perusal of the papers produced by the deponent before me that I am satisfied that he is Shri A.B. Solemnly affirmed before me on this_____ day of_____ 20_____ at_____ (time) by the deponent.

Sd/-_____

(Oath Commissioner)

INDEMNITY BONDS & UNDERTAKINGS

As per Section 124 of the Indian Contract Act of 1872, an Indemnity bond refers to an agreement between two persons or parties, where one person promises to make payment for the losses and damages of another person caused by his/her conduct or by another party. In other words, it is a financial contract drawn between two parties that promise financial security to a person as the aggrieved party can claim monetary compensation if the contract is breached. The Indemnity bond is primarily used in the mortgage, accounting, law, IT, and insurance industries.

Undertaking is a promise to do something on happening or non-happening of certain event as may be undertaken by person promising therein. Undertaking can be said to be a formal promise or pledge entered into by a person and if it was given to the court then additionally it was a promise to act in a particular manner.

DRAFTING OF AFFIDAVIT IN EVIDENCE – IMPORTANT CONSIDERATIONS

The provisions of erstwhile Sections 101, 102, 103, 106, 109, 110 and 111 of the Indian Evidence Act, 1872(now 104, 105, 106, 112, 113 and 114 of Bharatiya Sakshya Adhiniyam, 2023) must be carefully gone through before one proceeds to draft the affidavit-in-evidence. It is well settled that evidence should be tailored strictly according to the pleadings. No extraneous evidence can be looked into in absence of specific pleadings (*Habib Khan v. Valasula Devi, AIR 1997 A.P 52*). The following must be kept in mind while preparing the affidavit-in-evidence by the parties –

(i) The best evidence is that of a person who was personally involved in the whole transaction. In case, that person is not available for any reason, then any other person who has joined in his place to make deposition by way of his affidavit.

(ii) In case, the petitioner himself was involved in the execution of a contract, he should file affidavit-in evidence.

(iii) The allegations or charges or grounds relating to facts should be re-produced duly supported by documentary evidence. It may be noted that in the affidavit in evidence, the position of law or legal provisions or principle of law are not reproduced because the position of law or settled principles of law are not required to be proved by any party and they are deemed to exist and any party can argue and take help of those settled position of law while arguing their case before the Court or Tribunal or Forum and need to be proved by filing an evidence. (Section 3 of Bharatiya Sakshya Adhiniyam, 2023)

(iv) In case, the point or issue pertains to engineering, medical, technology, science or other complex or difficult issues, then the evidence of expert is to be filed in the form of his Affidavit. If necessary, the said witness has to appear before the Forum for the purpose of cross-examination by the counsel for the other party. For example, hand-writing or finger print experts etc.

(v) Besides the leading evidence on the points raised by the petitioner or by the opposite party in his written statement/reply, if possible, the party who is filing the affidavit-in-evidence should also file documents, papers or books or registers to demolish the defence or case set up by the opposite party.

(vi) It is also permissible for any party to bring any outside witness (other than the expert witness) in support of his case if the facts and circumstances of the case so warrant and permitted by the Court/ Tribunal.

(vii) At the time of tendering affidavit-in-evidence, the party must bring along with it either the original of papers, documents, books, registers relied upon by it or bring with it the copy of the same.

According to section 2(1)(e) of Bharatiya Sakshya Adhiniyam, 2023, “evidence” means and includes—

(i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence;

(ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence.

ARGUMENTS ON PRELIMINARY SUBMISSIONS

Preliminary submissions should primarily confine to the true and correct facts regarding the issue involved and which have been suppressed or not disclosed by the other side in the pleadings. Additionally the provisions of law or legal objections relevant and applicable to the issues involved in the matter should also be mentioned

so as to demonstrate that the relief being claimed by the opponent is not eligible to be granted and/or that the relief being claimed by the party being represented by a lawyer/authorized representative should ordinarily be allowed as per those provisions of law. Before incorporating such facts and/or provisions of law in the write-up, a lawyer/ authorized representative should be thorough with the provisions of law and interpretation, thereof, based upon relevant judgments so as to ensure that the submissions being made on behalf of the client are accepted and upheld by the Presiding Officer/Court/Tribunal as the case may be. Thus, for eg., if a claim being opposed by a lawyer/authorized representative is evidently barred by limitation, such an objection should be taken in the preliminary submissions/objections. Such type of submissions/objections should be duly supported by law on the point or by relevant case law/judgments.

ARGUMENTS ON MERITS

Such arguments as relate to the facts pleaded by the parties are termed as arguments on merits. While addressing arguments on merits, a lawyer/authorized representative should carefully point out the pleadings of the parties and the relevant evidence in support thereof, lead by the parties, both oral as well as documentary. A lawyer/ authorized representative should ensure that all or any contradiction in the pleadings of the opponent and the evidence in support of such pleadings are duly pointed out while submitting his/her arguments. Thus, where an agreement/contract of service is pleaded and there is no evidence either oral or documentary on record in support of such an agreement/contract, it should be specifically pointed out that the opponent has failed to prove/establish that such an agreement/contract actually exists or that the same had actually been executed at all. Similarly, where notice is alleged to have been served prior to filing of the case and there is no documentary evidence like postal receipt/courier receipt placed on record by the opponent, it should be pointed out that the opponent has failed to establish that the notice had actually been served. Furthermore, the relevant facts and/ or contradictions extracted from the opponent or his/her witness during the course of cross-examination and relating to the factual issues involved in the matter, should be highlighted so as to draw attention of the Court/ Tribunal towards such facts/contradictions.

LEGAL PLEADINGS/WRITTEN SUBMISSIONS

As already pointed out above, legal pleadings/submissions should be taken under the heading “preliminary submissions/objections”. While taking such plea one should ensure that the legal provisions and/or interpretation, thereof, is very clear and directly applicable to the issues involved in the matter. Thus, where an unregistered agreement/contract forms the basis of a claim set up by a party and such an agreement/ contract compulsorily requires registration under Section 17 of the Registration Act, a legal plea should be taken that since the agreement/contract is not a registered document, the same could not be looked into or relied upon by the Court for the reasons that the same cannot be read in evidence. Similarly, all other legal submissions which go to the root of the controversy and which are sufficient as well as material for adjudication of the issues involved, should be taken in opposition to the claims put forth by the opponent. Some illustrations are as under:

(i) Suit is not maintainable for want of statutory notice etc.

(ii) Plaint does not disclose cause of action.

(iii) Plaintiff has no right to sue.

(iv) Suit barred by principles of res-judicata.

(v) Suit barred by principles of waiver, estoppel, acquiescence.

(vi) Suit is barred by special enactment.

(vii) Court has no jurisdiction.

(viii) Suit is barred by limitation.

(ix) Suit is premature, and so on.

Some of these are known technically as 'special defences'. In a suit based on contract, defendant may admit that he made the contract, but may avoid the effect of admission by pleading performance, fraud, release, limitation etc.

WITNESSES IN PLEADINGS

Witnesses in Pleadings is not defined in Code of Civil Procedure, 1908. It can be presumed in form of affidavit and notarised document. The term "affidavit" is also not defined in the Code but it generally means "a sworn statement in writing made especially under oath or on affirmation before an authorised officer or Magistrate." Order 19 deals with the affidavits. An affidavit is, to put it simply, a written declaration of facts that is sworn in front of a witness with the power to conduct oaths. Every affidavit must be written and should only include facts, not conclusions. The person who makes it and signs it is known as Deponent. In the affidavit, the contents are true and correct to the knowledge of the person who signed it and he has nothing concealed material therefrom. The affidavit must be paragraphed and numbered as per the provision of the code. It should be duly attested by the Notary or Oath commissioner appointed by the court of law. According to Code of Civil Procedure Affidavit should be notarized by Notary only and same should not be attested either by Chartered Accountant or Company Secretary or Cost Accountant. The duty of the notary and oath commissioner is to ensure that the signature of the deponent is not forged. The purpose of notarisation is to certify genuineness and proper execution of documents in order to prevent fraud. Notarisation is done by a notary public appointed by the state or central government. He is also authorised to administer oath and take an affidavit from any person. A notarised document is complete once the notary signs it and stamps it with a notary seal, his registration number and date. He also makes an entry of the notarial act in his register. A notary is considered an impartial witness who verifies that parties to an agreement have signed it and have entered into the agreement knowingly and willingly.

IMPROPER ADMISSIONS IN PLEADINGS

Improper admissions is not used anywhere in CPC, however admission is defined. An admission is a statement made by the parties to a legal proceeding, either oral, documentary or contained in electronic form, which suggests an inference with respect to any fact in issue or relevant fact. Order XII Rule 6 of the Civil Procedure Code, 1908 provides for judgment on admissions and being an enabling provision, it is neither mandatory nor pre-emptory, but discretionary. Order XII Rule 1 provides that a party can admit the case of the other party, entirely or partially, by giving a notice. The notice should be in writing. Under Rule 2, a party may issue a notice to the other party to admit or refuse to admit any document. The opposite party has to admit the document within 7 days of the service of notice. If the party on whom the notice is served refuses or neglects to admit the document, the onus of bearing the cost of proving the document will be on the refusing or neglecting party. If a notice of admission has been issued by one party and the other party does not specifically deny the document or does not admit it in his pleading or reply, it will be deemed that the document has been admitted. The only exception is where the opposite party is a disabled person. Order 12 Rule 3A confers the power on the court to call upon any party to admit a document and to record the admission or denial of the party. The proviso to Rule 4 clarifies that admissions made by virtue of a notice under a particular proceeding cannot be used against the party making the admission in any other proceedings relating to any other suit. Under Order 12 Rule 6, the Courts have the power to make a judgement in regards to any oral or written admission made by the parties at any stage of the proceedings. Such admission may be made in the pleading or otherwise.

In the case of *Karan Kapoor v. Madhuri Kumar (2022)* the Apex Court noted that the power under Order 12 Rule 6 should be exercised only where the admission of documents or facts is clear, unambiguous and categorical. The admissions made in the present case were neither clear nor categorical and therefore the judgment of the Trial Court was liable to be set aside.

REJECTIONS IN PLEADINGS - ORDER 7, RULE 11

When any plaint is presented to the court, then it is the first duty of the court to examine the plaint properly for the determining, whether it should be tried, or returned, or rejected and in order to determine the question regarding the rejection of the plaint, and it is also the responsibility of the court to take consideration of other material facts too. Order 7 rule 11 of CPC mentions the provisions, where the plaint should be rejected. The plaint will be rejected in the following cases: -

1. Where plaint does not disclose the cause of action,
2. Where relief claimed is undervalued,
3. Where plaint is insufficiently stamped,
4. Where suit is barred by law,
5. Where plaint is not in duplicate, and
6. Where there is non-compliance with statutory provisions.

Under order 7 rule 11 the grounds for rejection are not exhaustive. A plaint can be rejected on other grounds also, for example, if the plaint is signed by the person not authorised by the plaintiff and if the defect is not cured within the time granted by the court, the plaint can be rejected. Likewise, where the plaint is found to be vexatious and meritless, not disclosing a clear right to sue, the court may reject the plaint under this rule.

The power conferred on the code under order 7 rule 11 is drastic in nature. Conditions precedent to exercise the said power is stringent. Hence, it is the duty of the court before exercising this power that such conditions are fulfilled. The power to reject the plaint can be exercised by the court at any stage of the suit.

LEGAL NOTICE AND ITS REPLIES

A legal notice is basically a legal intimation that is sent to the opponent, it indicates that the aggrieved is preparing a lawsuit to be filed against the concern, in the case the demand that is mentioned in the notice does not get fulfilled. Therefore, a legal notice can be defined as a formal communication to any legal entity or to a person, informing the other party about the intention of undertaking legal proceedings against them. The legal notice serves the purpose of giving an opportunity to the opposite party to reconsider his legal position and to make amendments or afford restitution without proceeding to a Court of Law. The notice helps to settle the disputes outside the Court. Majority of matters settle before the trial commences. The notice gives the opportunity to the opposite party to rethink or reconsider their stance. To avoid a legal dispute the parties can take necessary actions if in their opinion the case can be settled. The parties can settle the matter through negotiation, mediation or arbitration. The Legal Notice acts as a warning against the offender, a fair chance is given to both the parties to resolve their dispute, and provide an amicable settlement. Legal notice must mention the following points

- Name and address of the parties
- Facts and grievances
- Compensation
- Signature

The procedure of sending a legal notice includes -

i. The legal notice must be addressed to the person against whom the grievances arise.

ii. A legal notice must be sent on a plain paper or on the letterhead of a lawyer.

iii. The legal notice must categorically mention the time period in which the addressee must respond to the notice, the time period can be 30 to 60 days. The time period must be stipulated within which the other party is expected to fulfil the demands.

iv. The legal notice should be signed by the lawyer as well as the sender.

v. The legal notice must be sent either through a registered post or courier. It is advisable to ensure that the acknowledgement is retained.

Replying to a legal notice is the mix of the process of replying to a written statement and drafting of notice. The reply starts with the mention of the basic details of the legal notice received - date, details of the entity on behalf of whom the legal notice was sent etc. It may also contain mention of claims of legal notice received as false, or something of similar nature. The legal notice then starts with preliminary objections and then moves on to "reply on merits" - replying to the legal notice point/paragraph wise, and may not necessarily contain such a heading. This process is very similar to the drafting of a written statement or rejoinder.

Specimen Format: Legal Notice: Filed by Vendor for payment of immovable property

Ref. No. _____ Dated _____

REGD. A.D.

SUB.: LEGAL NOTICE

To,

_____

Dear Sir/Madam,

Pursuant to the instructions from and on behalf of my client _____, resident of _____ I do hereby serve you with the following Legal Notice: –

i. That my client had entered into an agreement of sale dated _____ with you.

ii. That the sale agreement was for the selling of house no. _____, situated at _____ for a consideration of Rs. _____.

iii. That according to the clause ____ of the agreement, the said transaction is to be completed within _____ months from the date of said agreement.

iv. That my client was and is still willing and ready to execute a sale deed in your favour or in favour of any person as you may direct in accordance with the terms of the said agreement, but it couldn't be done because of the default of the payment.

I hereby call upon you to have the deed of conveyance executed by my client against payment of the balance of the consideration money on or before the _____ day of _____, 20____ in terms of the said agreement, failing which the said agreement will stand cancelled and the earnest money paid by you will stand forfeited. However, this is without prejudice to the rights of my client to recover all costs, damages, losses and expenses incurred by him by reason of your default in performing the said agreement.

A copy of this Notice is kept in my office for record and further necessary action and you are also advised to keep the copy safe as you would be asked to produce in the court.

(_____)

Advocate

LESSON ROUND-UP

- In the ancient times when the king was the fountainhead of all justice, a petitioner used to appear before the king in person and place all facts pertaining to his case before His Majesty. After such oral hearing, the King used to summon the other party and thereafter listen to the defence statements put forward by the person so summoned.
- The document stating the cause of action and other necessary details and particulars in support of the claim of the plaintiff is called the "plaint". The defence statement containing all material facts and other details filed bythe defendant is called the "written statement".
- The four fundamental rules of pleadings are:
    1) That a pleading shall contain, only a statement of facts, and not Law;
    2) That a pleading shall contain all material facts and material facts only;
    3) That a pleading shall state only the facts on which the party pleading relies and not the evidence by which they are to be proved;
    4) That a pleading shall state such material facts concisely, but with precision and certainty.
- Court and tribunals are constituted to do justice between the parties within the confines of statutory limitations, and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted.
- Preventive Relief is granted at the discretion of the court by injunction, Temporary or Perpetual. The Relief of Injunction is an equitable relief and he who seeks equity must do equity. Hence, a party who asks for an injunction must be able to satisfy the court that his dealing of the matter had been fair, honest and free of any fraud or illegality.
- The object of notice under section 80 of CPC is to give the government or the public officer concerned an opportunity to reconsider the legal position and if that course is justified to make amends or settle the claim out of court.
- Suit of a civil nature is ordinarily tried in civil court. Every person has a right to bring a suit of a civil nature and civil court has jurisdiction to try the suits of a civil nature. Due to increasing litigation and delays in civil suits, parliament and state legislative created special courts and Tribunals with special enactments.
- When a petition is filed seeking interim relief, it is registered as miscellaneous petition. A Memo filed before the Court of Law need not be treated as Petition. The main difference between Petition and Memo is that Memo is nothing but bringing a fact to notice before a Court of Law and no relief can be sought for in a Memo and notice to the opposite party is not required.
- The Supreme Court and High Courts are authorized to issue five types of writs, under Articles 32 and 226 respectively. In fact, under Article 32, the Supreme Court can empower any other Court to issue the writs. But there has been no provision made so far by the court of law therefore to date only the Supreme Court and the High Courts can issue the writs.

GLOSSARY

Pleadings: pleadings are statements in writing drawn up and filed by each party toa 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.

Dilatory Pleas: They simply raise formal objections to the proceedings and do not give any substantial reply to the merits of the case, e.g., the plea that the court-fee paid by the plaintiff is not sufficient. Such pleas should be raised at the earliest opportunity.

Written statement: Written statement is the statement or defence of the defendant by which he either admits the claim of the plaintiff or denies the allegations or averments made by the plaintiff in his plaint.

Special Leave Petition: In suitable cases, where some arguable questions, mostly on legal points are involved, the Constitution confers under Article 136 wide discretionary powers on the Supreme Court to entertain appeals even in cases where an appeal is not otherwise provided for.

Affidavit: An affidavit is a sworn statement in writing made especially under oath before an authorized officer.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Define Pleading. Discuss its importance. What are the fundamental rules of pleadings?
2. What does a plaint structure contain?
3. What are the preferences in drafting a Written Statement?
4. Draft a notice of suit under Section 80, C.P.C.
5. Draft a petition under Article 226 of the Indian Constitution for the issues of Writ of Habeas corpus.
6. Draft a Specimen of Appeal to the High Court.
7. Define 'affidavit'. What rules and guiding principles should be followed while drawing up an affidavit?

LIST OF FURTHER READINGS

- Bare Act of Civil Procedure Code, 1908
- Drafting, Conveyancing and Pleadings (1982); 2nd Ed., N.M. Tripathi (P.) Ltd., Bombay

  G. M. Kothari and Arvind G. Kothari
- The Law of Pleadings in India (1987); 14th Ed. Rev. by Justice K.N. Goyal, etc. Eastern Law House, Calcutta

  P.C. Mogha

OTHER REFERENCES (Including Websites/Video Links)

- https://www.indiacode.nic.in/bitstream/123456789/2191/1/eng.pdf