

## **Order-06 Pleadings generally**

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## **Order-06 Pleadings generally**

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### **1. Pleadings :-**

"Pleadings" shall mean plaint or written statement.

### **2. Pleading to state material facts and not evidence :-**

(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained, in a separate paragraph.

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

### **3. Form of pleading :-**

The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be issued for all pleadings.

### **4. Particulars to be given where necessary :-**

in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms, aforesaid, particulars (with dates and items, if necessary) shall be stated in the pleading. Madhya Pradesh.-In Order VI of the First Schedule to the principal Act, after rule 4, the following shall be inserted, namely: "4-A. Particulars of pleading for agricultural land.-In any suit or proceeding contemplated under rule 3-B of Order I, the parties, other than the State Government shall plead the particulars of total agricultural land which is owned, claimed or held by them in any right and shall further declare whether the subject-matter or suit or proceeding is or is not covered by Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (No. 20 of 1960) and whether any proceedings in relation to such subject-matter are to the knowledge of the party pending before the competent authority".<sup>1</sup>

1. Vide M.P. Act No. 28 of 1984, Sec. 6 ; see also Abdul Khader Rowther v P. K. Sarabai A I R 1990 S.C.682atp.684.

### **5. Further and better statement or particulars :-**

**\*\*1 \*]**

1. Omitted for "A further and better statement of nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms as to cost and otherwise, as may be just. Bombay.-In its application to the State of Maharashtra in Order V for the existing rule 5 and its marginal note, the following rule and its marginal note shall be substituted as under: "5. Further and better statement or particulars.-(1) A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated to any pleading may in all cases be ordered upon such terms, as to costs and otherwise, as may be just. (2) No application for further and better particulars from the plaintiff or the defendant except the one given by the defendant on or before the returnable date of the summons or by the plaintiff on or before the first date fixed for hearing after the filing of the written statement, shall be entertained, unless the plaintiff or the defendant assigns good cause for the same. (3) After filing the written statement, the Court shall fix a date for (i) reception of

documents other than those in possession of power of parties, and (ii) applications for interrogatories; discovery of documents and the inspection thereof. Such applications should not be entertained thereafter unless 'good cause is shown to the satisfaction of the Court". 1 ", vide " Order-06 Pleadings generally" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

**6. Condition precedent :-**

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.

**7. Departure :-**

No pleading shall, except by way of amendment, raise any view ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

**8. Denial of contract :-**

Where a contract is alleged in any pleading a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied. and not as a denial of the legality or sufficiency in law of such contract.

**9. Effect of document to be stated :-**

Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

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**10. Malice, knowledge, etc :-**

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.

**11. Notice :-**

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.

**12. Implied contract, or relation :-**

Whenever any contract or any relation between any person is to be implied from a series of letters or conversations or otherwise from a number of 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 so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative,

**13. Presumption of law :-**

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 (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).

**14. Pleading to be signed :-**

Every pleading shall be signed by the party and his pleader (if any): Provided that 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.

**14A. Address for service of notice :-**

(1) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided

(2) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.

(3) The address furnished in the statement made under sub-rule (1) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or

matter.

(4) Service of any process may be effected upon a party at his registered address in all respects as though such party resided thereat.

(5) Where the registered address of a party is discovered by the Court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order-

(a) in the case where such registered address was furnished by a plaintiff, stay of the suit, or

(b) in the case where such registered address was furnished by a defendant, his defence be struck out and he be placed in the same position as if he had not put up any defence.

(6) Where a suit is stayed or a defence is struck out under sub-rule (5), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.

(7) The Court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.

(8) Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if, for any reason, it thinks fit to do so.]

Bombay.-In its application to the State of Maharashtra in Order VI, for the existing sub-rule 14-A, the following rule shall be substituted as under:

"14-A. Address for service of notice.-(1) Every pleading when filed by a party, shall be accompanied by a statement in the prescribed form signed as provided in rule 14, regarding the address of the party. Parties subsequently added shall immediately on being so added file a memorandum in writing of this nature. (2) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition. Notice of such change shall be

given to such other parties as the Court may deem it necessary and the form showing the change may be served either on the pleaders of such parties or be sent to them by registered post pre-paid for acknowledgment as the Court thinks fit. (3) The address furnished in the statement made under sub-rule (1) shall be called the "registered address" of the party, and shall until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of six years after the final determination of the cause or matter. (4) (i) Where a party is not found at the registered address and no agent or adult male member of his family, on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present, another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address of that party by registered post pre-paid for acknowledgment (which pre-payment shall be made within one month from the date originally fixed for hearing) and such service shall be deemed to be as effectual as if the notice or process had been personally served. (iii) Where a party engages a pleader, notice or process issued against the party shall be served in the manner prescribed by Order III, rule 5, unless the Court directs service at the registered address of the party. (5) Where the registered address of a party is not filed within specified time or is discovered by the Court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order- (a) in case where the default in furnishing registered address is by the plaintiff or where such registered address was furnished by a plaintiff, rejection of the plaint, or (b) in case where the default in furnishing registered address is by the defendant or where such registered address was furnished by a defendant his defence is struck out and he be placed in the same position as if he had not put any defence. (6) Where a plaint is rejected or defence is struck out under sub-rule (6) the plaintiff or as the case may be the defendant after furnishing his true address, apply to the Court for an order to set aside the rejection of the plaint or as the case may be, the order striking out the defence. (7) The Court is satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the rejection of the plaint or order striking out the defence, on such terms as to costs or

otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence as the case may be. (8) Where a party is not found at the registered address and no agent or adult member of his family on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present, another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address of that party by registered post pre-paid for acknowledgment (which pre-payment shall be made within one month from the date originally fixed for hearing) and such service shall be deemed to be as effectual as if the notice or process had been personally served. (9) Where the Court has struck out the defences under sub-rule (5), and has consequently passed a decree or an order, the defendant or the opposite party, as the case may be, may apply to the Court by which the decree or order was passed for an order setting aside the decree or order and if he files a registered address and satisfies the Court that he was prevented by any sufficient cause, from filing the address, the Court shall make an order setting aside the decree or order against him upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or proceeding, provided that where the decree or order is of such a nature that it cannot be set aside as against such defendant or opposite party only, it may set aside as against all or any of the defendants or opposite party. (10) Nothing in this rule shall prevent the Court from directing service of a process at any other address, if for any reason it thinks fit to do so. (II) Where a party engages a pleader, a notice or process issued against the party shall be served in the manner prescribed by Order III, rule 5, unless the Court directs service at the registered address of the party."<sup>1</sup>

1. Vide High Court Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).

### **15. Verification of pleadings :-**

(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties, pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

Uttar Pradesh.-In the First Schedule to the said Code, in Order VI, in rule 15, in sub-rule (1), for the words "on oath administered by an officer empowered under Sec. 139 of the Code", the words "at

the foot" shall be substituted <sup>1</sup>Bombay.-In its application to the State of Maharashtra in Order VI, rule 15 at the end of sub-rule (1) a colon for the full stop and thereafter the following proviso shall be inserted as under: "Provided that in respect of pleadings to be filed in the Bombay City Civil Court such verification shall, within the local jurisdiction of the Court, be made before one of the officers of the said Court empowered to administer oath, and elsewhere before any officer mentioned in Sec. 139 of the Code of Civil Procedure, 1908."<sup>2</sup>

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

<sup>3</sup> (4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

1. Subs. by U.P. Act No. 31 of 1978, Sec. 4 (w.e.f. 1st August, 1978).

2. Vide High Court Notifin. No. P. 0102/77 (w.e.f. 1st October, 1983).

3. Inserted vide " Order-06 Pleadings generally" Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

### **16. Striking out pleadings :-**

<sup>1</sup> The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.)

1. Ins. by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 56.

### **17. Amendment of Pleadings :-**

<sup>1</sup> The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in

controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced. unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

1. Rule 17 and 18 Substituted by "THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002 [22 of 2002]" in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002.

**18. Failure to Amend after Order :-**

" **1** If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, of it" no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court."

1. Rule 17 and 18 Substituted by "THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002 [22 of 2002]" in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002.