

Order-07 Complaint

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Order-07 Complaint

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1. Particulars to be contained in complaint :-

The complaint 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.

Bombay.-In its application to the State of Maharashtra in Order VII, rule I for the existing item (i), the following shall be substituted as item (i) as under: "(i) a statement of the value of the subject-matter of the suit for the purpose of jurisdiction and of court-fees, so far as the case admits, showing the provisions of law under which the valuation for court-fees and jurisdiction is separately made."¹

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

2. In money suite :-

Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed. But where the plaintiff sues for mesne pro/its, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant,¹ [or for moveables in the possession of the defendants, 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.]

1. Subs. by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 57 for the words "the plaint shall state approximately the amount sued for" (w.e.f. 1st February, 1977).

3. Where the subject-matter of the suit is immoveable property :-

Where the subject-matter of the suit is immoveable 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. Bombay.-In its application to the State of Maharashtra in Order VII, for the existing rule 3 and its marginal note, the following rule and its marginal note shall be substituted as under; "3. Where the subject-matter of the suit is immoveable property. -Where the subject-

matter of the suit is immoveable 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. In case of encroachment a sketch showing as approximately as possible the location and extent of the encroachment shall also be filed alongwith the plaint." ¹

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

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.

5. Defendants interest and liability, to be shown :-

The plaint shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiffs demand.

6. Grounds of exemption from limitation law :-

Where the suit is instituted after the expiration of the period prescribed by the law of limitation the plaint shall show the ground upon which exemption from such law is claimed : ¹ [Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.]

1. Added by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 57 (w.e.f. 1st February, 1977).

7. Relief to be specifically stated :-

Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not 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.

8. Relief founded on separate grounds :-

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

9. Procedure on admitting plaint :-

¹Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants,

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Bombay.-In its application to the State of Maharashtra in Order VII for the existing rule 9 and its marginal note the following rule and its marginal note shall be substituted as under: "9. Chief Ministerial Officer to sign lists and copies.-The plaintiff shall endorse on the plaint or annex thereto a list of documents (if any) which he has produced along with it. (2) The Chief Ministerial Officer of the Court shall sign such lists and copies of the plaint with annexures presented under rule 1 of Order IV, if on examination he finds them to be correct."² New sub-rule (1-A) has been inserted in rule 9 to make it clear that the plaintiff should pay the requisite fees for the service of summons on the defendants within the time fixed by the Court or extended by it from time to time.

1. Rule 9 Substituted by "THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002 [22 of 2002]." published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002.

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

10. Return of plaint :-

(1) ¹[Subject to the provisions of rule 10-A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. Procedure on returning plaint.-(2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it. Bombay.-In its application to the State of Maharashtra in Order VII, rule 10, for the existing sub-rule (1) and its marginal note the following sub-rule and its marginal note shall be substituted as under: "(1) Subject to the provisions of rule IO-A, the plaintiff shall return the plaint at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. The plaintiff or his pleader shall be informed of the date fixed for the return of the plaint."²

1. Subs. by C.P.C. (Amendment) Act No.104 of 1976, Sec. 57, for the words "The plaint shall" (w.e.f. 1st February, 1977). -
2. Vide High Court Notifin. No. P. 0102/77 (w.e.f. 1st October. 1983).

10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return :-

(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court-

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-

(a) fix a date for the appearance of the parties in the Court in which the

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),-

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

10B. Power of Appellate Court to transfer suit to the proper Court :-

(1) Where, on an appeal against an order for the return of plaint, the Court hearing the appeal confirms such order, the Court of Appeal may, if the plaintiff by an application so desires, while returning the plaint, direct plaintiff to file the plaint, subject to provisions of the Limitation Act, 1963, in the Court in which the suit should have been instituted (whether such Court is within or without the State in which the Court hearing the appeal is situated), and fix a date for the appearance of the parties in the Court in which the plaint is directed to be filed and when the date is so fixed, it shall not be necessary for the Court in which the plaint is filed to serve the defendant with the summons for appearance in the suit, unless that Court in which the plaint is filed, for reasons to be recorded otherwise directs.

(2) The direction made by the Court under sub-rule (1) shall be without any prejudice to the rights of the parties to question the jurisdiction of the Court, in which the plaint is filed to try the suit]

11. Rejection of plaint :-

The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law: ¹[Provided that the time fixed by the Court for the correction of the valuation or

²(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

(g) where the plaintiff fails to comply sub-rule (3) of rule 9.

1. Ins. by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 57 (w.e.f. 1st February, 1977).

2. Inserted vide " Order-07 Plaintiff" 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

3. in rule 11, sub-rule (f) substituted by "THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002. [22 of 2002] published in the Gazette of India, Extraordinary, Part II, Section No.25 I, dated May 24, 2002"

12. Procedure on rejecting plaint :-

Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

13. Where rejection of plaint does not preclude presentation of fresh plaint :-

The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Bombay.-In its application to the State of Maharashtra in Order VII for the existing rule 13 and its marginal note, the following rule and its marginal note shall be substituted as under: "13. Where rejection of plaint does not preclude presentation of fresh plaint.- The rejection of the plaint on any of the grounds hereinbefore mentioned in rule 14-A (5) (a) of Order VI shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."¹

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

14. Production of document on which plaintiff sues or relies

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(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of

the plaintiff, he shall, wherever possible, state in whose possession or power it is.

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"(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.";

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiffs witnesses, or, handed over to a witness merely to refresh his memory.

1. Substituted for " 14 [Rule-14]Production of document on which plaintiff sues - (1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint. (2) List of other documents.-Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim he shall enter such documents in a list to be added or annexed to the plaint. ", vide " Order-07 Plaint" 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

2. In rule 14 sub-rule 3 substituted by THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002. in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May24, 2002

15. Statement in case of documents not in plaintiffs possession or power :-

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1. Omitted for "Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is. ", vide " Order-07 Plaint" 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. Suits on lost negotiable instruments :-

Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the

instrument in Court when the plaintiff was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

17. Production of shop-book :-

(1) Save in so far as is otherwise provided by the Banker's Books Evidence Act, 1891 (18 of 1891), where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies,

(2) Original entry to be marked and returned.-The Court or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

Bombay.-In its application to the State of Maharashtra in Order VII, rule 17 at the end of sub-rule (2), substitute a colon for the "full stop and the following proviso shall be inserted as under: "Provided that where the entry referred to in this rule is in a language other than English or the language of the Court, the plaintiff shall file with the plaint a true copy of the entry together with its translation either in English or in the language of the Court, such translation being verified as regards its correctness by an affidavit of the person making the translation: Provided further that the Court may accept a plaint without the translation and permit the party to file the said translation within a time to be fixed by the Court. In either of such cases the Court or its officer need not examine and compare the copy with the original and certify the same to be correct."

18. OMITTED BY THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002. :-

¹ Omitted by "THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002."

1. RULE 18 SHALL BE OMITTED BY THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002. as published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002