

# “Drafting, Pleadings and Conveyancing”

## Drafting is an Art and Skills

Drafting in its general connotation means, putting one's own ideas in writing.

Drafting of any matter is an art. Drafting of legal matters requires greater skills and efficiencies.

It requires thorough knowledge of law, procedure, settled judicial principles, besides proficiency in English Language. A perfect drafting of matters in relation to Suits, Applications, Complaints, Writ petition, Appeals, Revision, Reviews and other such matters connected therewith shall obviously leads to good result in terms of money, time, energies and expectation of not only the learned members of the Bench, but also the Bar as well as the parties to the litigation. It creates a congenial atmosphere where the glory of the judiciary and the Law grows to sky-heights.

# Meaning of Pleadings

See-(Order 6 Rule-1)

"Pleading" shall mean plaint or written statement.

Pleadings are the statement of facts in writing drawn up and filed in a Court by each party to a case stating therein what his contention shall be at the trial and giving all such details as his opponent will need to know in order to prepare his case in answer. In India there are only two pleadings in a suit as defined under Order 6, rule 1 of the Code of Civil Procedure, it says that pleading means "Plaint or Written Statement". This definition is not very clear in itself. The plaint and written statement are defined in the following clauses:

(A)- **Plaint:** A statement of claims, called the "plaint" in which the plaintiff sets out his cause of action with all necessary particulars; and – See- Order 7

(B) **Written Statement:** A statement of defences, called the "written statement"

**which** the defendant deals with every material fact alleged by the Plaintiff in the plaint and also sets any new facts which tells in his favour, adding such objection as he wishes to take to the claim.

## **Order 8**

Beside the plaint and the written statement, order pleading that may be filed, may be classed under two heads:

- (i) Subsequent pleadings, and
- (ii) Additional pleadings.

**(i) Subsequent Pleadings:** The only subsequent pleading which is filed as a matter of right, without the leave of the court, is a written statement of a plaintiff by way of defence to a plea set-off set up by a defendant in the written statement of his defences. No other pleading subsequent to the written statement of a defendant other than that by way of defence to a plea of set off can be presented except with the leave of the court and upon such terms as the court may think proper. But the Court may at any time require a written statement or an additional written statement from any of the parties and fix a time for presenting the same (O.8, r.9). Any ground of defence which has

arisen after the institution of the suit or the presentation of the written statement, may be, raised by the plaintiff or the defendant as the case may be, in his written statement (O.8, r.9). This is also a subsequent pleading.

**(ii) Additional Pleading:** Although no pleading subsequent to the written statement of a defendant other than by way of defence to a plea of set-off can be presented without the leave of the court, yet the court may at any time require a written statement or additional written statement from any of the parties, i.e., plaintiff or defendant or both (O.8, r.8). The additional pleadings are not subsequent pleadings in the true sense of the term. They are pleading by way of further and better statement of the nature of the claim or defence or further and better particular of any matter or state in the pleadings. These pleading may be ordered under order 6, rule 5 of the Code of Civil Procedure.

**The objects of pleading can be enlisted as follows:**

1. To taper down the broad issues on which dispute arose to a narrow and common issue.

2.To avoid sudden and astonishing facts from emerging in the proceeding and causing travesty of justice.

3.To render judicial proceedings inexpensive, less cumbersome and approachable.

4.To protect the valuable time of people that is wasted in framing arguments after every hearing.

5.To eliminate irrelevant facts and materials that will waste the time of the court.

6.To aid the court in reaching to a fruitful conclusion.

### **Fundamental Rules of Pleading-**

Order 6 Rule 2(1) states that

“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”.

Thus, this provision indicates that there are four basic or fundamental rules of documenting a pleading:

1. Pleadings ought to state the facts of the case and not the legal provisions applicable in the case.
2. Pleadings must contain only material facts.
3. Pleadings should contain the relevant facts on which either party relies but it should not state the evidence by which the fact is proposed to be proved.
4. Pleadings must contain a concise, i.e. brief facts that explains the details of the case in short.

Thanks

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