



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. 4th Semester

SUBJECT: ENGLISH-III

SUBJECT CODE: BAL. 403

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Lecture-3



Written statement

Written statement is the defense of the defendants. A 'defense' called the written statement, in general this is a reply of plaintiff, in which defendant deny or admit the each and every allegation or facts given in the plaintiff. Denial or admission must be Para wise and clear. In the written statement defendant can put his case also under the heading additional plea, and can states new facts or ground which is necessary to defeat the opponent. If defendant want to put his own claim against the plaintiff, he can put it by way of set- off and counterclaim u/o 8 Rule 6 and 6A of C.P.C.

Duty of defendant to produce documents upon which relief is claimed or relied upon by him:

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced 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 documents—

(a) Produced for the cross-examination of the plaintiff's witnesses, or

(b) Handed over to a witness merely to refresh his memory.] (Order VIII, Rule 1-A).

Production of documents and list of documents:

Save as otherwise provided in Rule 8-A, where the defendant relies on any document (whether or not in his possession or power) in support of his defence or claim for set-off or counter-claim he shall enter such a document in a list, and shall: (a) if a written statement is presented, annex the list to the written statement (and where he claims a set-off or makes a counter-claim based on a document in his possession or power, he shall produce it in court at the time of presentation of the written statement and shall at the same time deliver the document or copy thereof to be filed with the written statement); and (b) if a written statement is not presented, present the list to the court at the hearing of the suit. [Order VIII, Rule 1(2)]. Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

If no such list is so annexed or presented, the defendant shall be allowed such further period for the purpose as the court may think fit. [Order VIII, Rule 1(1-4)]. A document which ought to be entered in the list and which is not so entered, shall not, without the leave of the court, be received in evidence on behalf of the defendant at the hearing of the suit. [Order VIII, Rule 1(5)].

Nothing in sub-rule (5) shall, however, apply to documents produced for the cross-examination of plaintiff's witnesses or in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or handed over to a witness merely to refresh his memory. [Order VIII, Rule 1(6).]

Where the plaintiff in second appeal is allowed to amend his plaint, the defendant must also be given an opportunity to file an additional written statement before passing a decree or order.

A person in his capacity as a defendant can raise any legitimate plea available to him under law to defeat the suit of the plaintiff. This would also include the plea that the sale deed by which title to the property was intended to be created upon.

Thus, the whole question would depend upon the pleadings of the parties, the evidence led by the parties in the suit and other attending circumstances. It would be open to the tenant in his capacity as defendant to assert, plead and prove that the deed was fictitious and collusive in nature and deed was only to evict him.

Court has power to condone non-filing of written statement within 90 days:

Though a defendant is required to file written statement within 30 days after receipt of summons and though the Court can extend the time till 90 days, the Court is not divested of power to fix further time for filing the written statement.

It is well settled that this cardinal principle of interpretation of law with an enactment has to be read as a whole and then the entire section has to be read and thereafter the Act has to be interpreted section by section. One Rule or one Section in the enactment cannot be a guiding factor for arriving at the intendment of the legislature.

The very fact that Rule 10 is re-introduced by Act 22 of 2002 by the Parliament would show that the Parliament never intended the Civil Court to pronounce judgment immediately after the failure on the part of the defendant to file written statement within 90 days.

Duty of defendant to produce documents upon which relief is claimed by him:

Where a defendant bases his defence upon a document in his possession or power, he shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document or copy thereof, to be filed with the written statement. [Order VIII, Rule 8-A],

The written statement must contain a statement in a concise form of the material facts on which the defendant relies for his defence, but not the evidence by which they are to be proved.

He must raise by his pleading all matters which show that the suit is not maintainable or that the transaction is either void or voidable in point of law, and all such grounds of defence must also be stated which, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as for instance, fraud, limitation, release, payment, performance, or fact showing illegality. (Order VIII, Rule 2).

The defendant must deal specifically with each allegation of fact of which he does not admit the truth. It shall not be sufficient for him in his written statement to deny generally the grounds alleged by the plaintiff.

There must be no evasive denial of fact, for every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.

Thus if it is alleged that the defendant received a certain sum of money, it shall not be sufficient to deny that he received that particular amount but he must deny that he received that sum or any part thereof, or else set out how much he received. (Order VIII, Rules 4 and 5). If the allegations of fact made in the plaint have not been specifically denied, they should be deemed to have been admitted.

Specific Denial and deemed Admission:

Rule 3 of Order VIII requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth. Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant.

What this rule says is that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted.

Admission—sufficient:

In election petition the allegations of corrupt practices were made on the basis of speeches of a speaker in presence of the candidate. The candidate denied that expressly or impliedly he had consented to the alleged offending speeches and he asserted that he was not connected with any act of the speaker or responsible for any of her actions and he has not invited her. The denial envisaged under Order VIII, Rule 5 was complete and no implied admission of averments in petition can be read by non-traverse.

Admission not sufficient:

Private contractor challenged after lapse of four years the Government order black listing him on the ground of non-service of order. Government pleaded that the order was communicated. High Court set aside the order of black-listing on the ground of non-traverse as the Government failed to deny the allegations of contractor.

Supreme Court held that the order of High Court was not justified. When the black listing order was challenged after lapse of four years, the High Court should have asked the proof of receipt or non-receipt of order other than the alleged admission.

Against suit of recovery one defendant denied his signatures on vakalatnama and written statement. In such case instead of going protracted trial, court should have decreed the suit of the plaintiff against the defendant denying signatures on written statement and vakalatnama.

Limitation period of suit for redemption of mortgage:

Where document of mortgage had been duly proved and there was no specific denial of defendant about plea of date of mortgage. Plaintiffs' witnesses were not cross-examined regarding the date of execution of mortgage deed. Held, that suit filed within period of five years next after commencement of Limitation Act of 1963 was within the period of limitation.

Effect of non-filing of defence—pronouncement of Judgment on plaint:

Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of facts contained in the plaint, except as against a person under a disability, but the court may, in its discretion, require any such fact to be proved. In exercising its discretion the court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

Where the defendant relies upon several distinct grounds of defence founded upon separate and distinct facts, they must be stated separately and distinctly. (Order VIII, Rule 7).

The defendant may also in a suit for recovery of money file the particulars of the debt sought to be set off in the written statement, which shall have the same effect as a plaint in a cross suit.

Subsequent pleadings:

No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same. (Order VIII, Rule 9).

Procedure when party fails to present written statement called for by Court:

Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.”] (Order VIII, Rule 10).

Additional written-statement:

Merely because the amendment sought is alleged to be inconsistent with the previous case of the defendant, it is not a good reason for rejecting the application of the defendant for amendment. The general rule applicable to a case of this nature is that leave to amend ought to be granted unless the party applying is acting mala fide or by his blunder has done some injury to his opponent which cannot be compensated by award of costs; otherwise whether the original omission arose from negligence, carelessness, or accidental error, the defect may be allowed to be remedied if no injustice is done to the other side.

Money suit—Recovery of rent and other charges for three years:

Where the claim portion also includes words “rent pendente lite and future rents”, held that there was no scope for consideration of money suit claiming future and pendente lite interest. Such claim was not considered by Court and judgment was silent on it. Therefore claim not being legally maintainable, silence must be construed that the same had been rejected by the trial Judge.

Jurisdiction to grant alternative relief:

Where the relief prayed for in the suit is a larger relief and if no case is made out for granting the same but the facts, as established, justify granting of a smaller relief. Order VII, Rule 7 permits granting of such a relief to the parties. However, under the said provisions a relief larger than the one claimed by the plaintiff in the suit cannot be granted.

MCQ

1. The Order of C.P.C which deals with written statement is

a. Order VII

b. Order VI

c. Order VIII

d. Order IX

2. The reply of the plaint filed by the defendant is familiar as

a. written statement

b. written reply

c. reply

d. none of the above

3. According O. VIII, R. 3, of C.P.C. when defendant deny any fact of plaint denial to be

a. specific

b. Exemplary

c. Ambiguous

d. none of the above

4. Written Statement present before court by.....

a. Plaintiff

b. Defendant

c. Parties

d. Both a & b

5. Written Statement means

a. defense of defendant

b. defense

c. reply of plaintiff

d. all the above