



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. 1st Semester

SUBJECT: ADVANCE LEGAL WRITING SKILL-I

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LECTURE: 38

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Lecture-38



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 plaint. 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 state 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.

NOTE:-The facts which remain unanswered by the defendant, it will be presumed that the said fact was admitted by the defendant. In general the fact which is taken to be admitted need not be proved. Pleading must be unambiguous clear and correct. Carelessly prepared pleading can spoil the suit.

"if a plea which was relevant for the purpose of maintaining a suit had not been specifically traversed, the Court was entitled to draw an inference that the same had been admitted. A fact admitted in terms of Section 58 of the Evidence Act need not be proved."

(v) (2010) 10 Supreme Court Cases 512 (MAN KAUR v. HARTAR SINGH SANGHA):-

Drafting of Written Statement:

Order VIII provides for the filing of a written statement, the particulars to be contained therein and the manner of doing so. It requires what a written statement should contain. Before drafting the written statement it is the duty of the defendant to study the plaint thoroughly and all the documents submitted by the plaintiff with the plaint in support of his claim. After the thorough study of the plaint and supported documents a para wise answer of the plaint can be prepared. Order VIII of the Code of Civil Procedure deals with the written statement, set off and counterclaim.

Time for Filing of Written Statement (Order VIII Rule 1) :

The text of Order VIII, Rule 1, as it stands now, reads as under :-

"I. Written Statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defense :

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons".

Three things are clear. Firstly, a careful reading of the language in which Order VIII, Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the Court and also does not specifically take away the power of the Court to take the written statement on record though filed beyond the time as provided for. Secondly, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Thirdly, the object behind substituting Order VIII, Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the Court for quick relief and also to the serious inconvenience of the Court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.

Time for filing written statement is fix for 30 days from the date of service of summons on him and maximum time limit from the date of service of summons is ninety days. Order, 8 Rule 1

Provision of Order 8, Rule 1 are directory in nature even after expiry of stipulated period court can extend time to file written statement. (AIR 2002 SC 2487, Rameshwar Lal v. Daya Nand AIR 2005.) Duty of defendant to produce document upon which relief is claimed or relied upon by him (Order VIII Rule 1A.):-(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 counterclaim, 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."

NOTE:-

Order VII Rule 14 of the Civil Procedure Code (CPC) deals with the documents of the Plaintiff and Order VIII Rule 1-A of the CPC with regard to the documents of the Defendant. Besides this, Order XIII deals inter alia with the production of documents. This relates to production by both the parties, the Plaintiff and the Defendant. Under Order XIII Rule 1 of the CPC, the original documents are required to be produced by the parties and received by the Court.

New Facts Must be Specially Pleaded (Order VIII Rule 2.):-

Order VIII, Rule 2. requires that the defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, 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 facts showing illegality.

Denial to be Specific (Order VIII Rule 3.): -

Order VIII Rule 3. requires that it shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff. but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

"if a plea which was relevant for the purpose of maintaining a suit had not been specifically traversed, the Court was entitled to draw an inference that the same had been admitted. A fact admitted in terms of Section 58 of the Evidence Act need not be proved." (v) (2010) 10 Supreme Court Cases 512 (MAN KAUR v. HARTAR SINGH SANGHA): -

Evasive denial (Order VIII Rule 4.): -

Rule 4 of Order VIII of C.P.C. says that where a defendant denies an allegation of fact in a plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he 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. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively but answer the point of substance. If the denial of a fact is not specific but evasive, then the said fact is to be taken to have been admitted. In such an event, the admission itself being proved, no other proof is necessary and the law in that regard is well settled since the decision of the Apex Court in the matter of Badat and Co. v. Eastern India Trading Co., .

Specific Denial(Order VIII Rule 5.):-

[(1)] 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 person under disability.

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

[(2)] Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the 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.

(3) In exercising its discretion under the proviso to sub- rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.]"

Note: It is settled law that denial for want of knowledge is no denial at all. The provisions contained in Order 8 Rule 5 require pleadings to be answered specifically in written statement. 2016 (3)UAD 30 SC Muddasani venkata narsaiah (D) through LRS versus Muddasani sarojana.

Note: Procedure Where Written Statement by the Defendant is not Filed.

"Order VIII provides the procedure where written statement by the defendant is not filed. Order VIII Rule 5(2)(4) provides that 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 and after pronouncing the judgment a decree is required to be drawn up in accordance with such judgment. Under Order VIII Rule 10 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, 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. This rule gives a discretion to the Court either to pronounce the judgment against the defendant or make such order in relation to the suit as it thinks fit."

While interpreting Order VIII, this Court in *Balraj Taneja & Another v. Sunil Madan & Another* [(1999) 8 SCC 396] held that merely because written statement is not filed the Court should not proceed to pass judgment blindly and observed thus:-

"The court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a

written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant, it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the courts satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement."

MCQ

1. From which source India got the concept of Single order of court?

(A) Government of India Act, 1935

(B) Government of India Act, 1919

(C) Pitts India Act, 1773

(D) None of the following

Answer A

Explanation: Government of India Act, 1935

2. Which of the following statement is not true about India's Supreme Court?

(A) Article 124 to 147 and Part V of the Indian Constitution informs about the composition and powers of the Supreme Court?

(B) The Supreme Court was inaugurated on January 28, 1950

(C) At present, there are 35 judges in the Supreme Court

(D) Judges of Supreme Court are appointed by the President of India

Answer C

Explanation: The strength of Supreme Court judges increased from 31 to 34, including the Chief Justice of India in Sept.2019.

3. Which qualification is wrong for being a judge in the Supreme Court?

- (A) It is compulsory to be a citizen of India.
- (B) He should be a respected jurist in the eyes of Parliament
- (C) Must be a judge in the High Court for at least 5 years
- (D) He should be a lawyer in the High Court for at least 10 years

Answer B

Explanation: In the eyes of the President, he should be a respected jurist.

4. Which statement regarding the tenure of judges of the Supreme Court is not correct?

- (A) Judge of the Supreme Court can remain in office till the age of 65 years.
- (B) Judge of the Supreme Court gives his resignation letter to the Chief Justice
- (C) On the recommendation of Parliament, he can be removed by the President.
- (D) Supreme Court judge can be removed only in the condition of misconduct.

Answer B

Explanation: A judge of the Supreme Court gives his resignation letter to the President.

5. Who can remove the Judge of the Supreme Court?

- (A) Chief Justice of the Supreme Court

(B) Only President

(C) Only Parliament

(D) Both Parliament and President