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## **FACULTY OF JURIDICAL SCIENCES**

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

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# Lecture-40



## AMENDMENT OF PLAINT

Before understanding amendment of pleadings, there is a need to explain what is Pleadings and its Rule. Pleadings are the statements which are the backbone of every civil suit. No civil suit will come into existence if there are no Pleadings. Pleadings have been defined under Order 6 Rule 1 of CPC which states that Pleading shall be Plaint or Written Statements. Plaint is the statements filed by the Plaintiff in a Civil Court to prove his claim whereas Written statements are the statements defined in Order 8 Rule 1 of CPC which states that defendant should file written statements in 30 days from the date of issuance of the summons. Written statements are filed by the defendant for his defense. Plaint has not defined in CPC but it can be termed as pleadings of Plaintiff from which civil suit is initiate Pleadings should be properly drafted and it should not contain any vague or unambiguous statements. Pleadings are those material facts which helps plaintiff to define the cause of action and defendant to establish his defense in a civil suit.

### **What rules to be followed while drafting of pleadings?**

1. Pleading should contain the facts but no law should be applied in pleadings. Only the court has the power to apply the law on the basis of fact stated in the Pleadings. In the case of Gouri Dutt Ganesh Lal Firm v. Madho Prasad,<sup>1</sup> honorable court stated that Pleadings should be defined in four words – “Plead Facts, not laws”.
2. Pleadings should contain material facts. Parties should avoid using immaterial or irrelevant facts in the Pleadings. In the case of Virender Nath v. Satpal Singh<sup>2</sup>, the court stated that material facts are those facts

which helps Plaintiff to define his cause of action or defendant to strong his defense.

3. Parties should not give the evidence in the pleadings from which facts are proved.
4. Pleadings should contain the material facts in the brief form. Parties should avoid using irrelevant or immaterial statements while drafting the Plaint.

### **Order VI Rule 17 Code of Civil Procedure :**

**17.Amendment of pleadings** – *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.”*

### **In which stage of civil suit pleading can be amended?**

The Provision related to Amendment of Pleadings gives power to the civil court to allow parties to alter, amend or modify the pleadings at any stage of proceedings<sup>1</sup>. Provision for Amendment of pleadings has been stated in Order 6 Rule 17 of the Code of civil procedure. But the court will allow amendment only if this amendment is necessary to determine the controversy between the parties.

The purpose of this provision is to promote ends of justice and not to defeat the law.

The Proviso of Order 6 Rule 17 states that court will not allow application of amendment after the trial has been commenced unless court comes to the conclusion that party did not raise the relevant facts before the commencement of the trial. This proviso gives discretionary power to the court to decide on the application of pleadings after the commencement of the Trial. An institution of the suit is necessary for applying for amendment of pleadings.

This provision was deleted by the Civil Procedure (Amendment) Code, 1999. This omission was made to ensure consistency in new changes in the civil code. But later, it was restored by the Civil Procedure (Amendment) Code, 2000. This amendment has given power to the court to allow application of the pleadings with some limitation.

In the case of *Gurdial Singh v. Raj Kumar Aneja*<sup>4</sup>, the court stated that any person who is applying for the amendment of pleadings should state that what is to be altered, amended or modified in the original pleadings.

In the case of the *Rajesh Kumar Aggarwal & Ors v. K.K. Modi & Ors*<sup>5</sup>, the court stated that Amendment of pleadings consists of two parts :

1. In the first part, the word 'may' gives discretionary power to the court to allow or disallow application of pleadings.
2. In the second part, the word 'shall' gives obligatory direction to the civil court to allow the application of pleadings if this amendment is

necessary for the purpose of determining the real questions in controversy between the parties.

### **Why court allows amendment of Pleadings?**

The primary objective for the court to allow application for Amendment of Pleadings is secure the ends of the justice and prevent injustice to other parties. Also, this amendment is necessary for the purpose of determining the real questions in controversy between the parties. Amendments of pleadings help the parties to correct its mistakes in the pleadings. In the case of Cropper v. Smith, the court stated that the object behind amendment of pleadings is to protect the rights of the parties and not to punish them for the mistake made by them in the pleadings.

### **What can be amended in pleading?**

1. Plaint filed by the Plaintiff
2. Written Statements filed by the Defendant

### **Importance of the Doctrine of Relation back in Amendment of Pleadings**

When the court allows the application of the Amendment of Pleadings then it relates back to the date of suit. But in the case of Sampath Kumar v. Ayyakannu<sup>6</sup>, the court stated that in some special cases, the court can direct that amendment of pleadings will not relate back to the date of suit.

### **Amendment of Pleadings when granted:**

In the case of Kishan Das Vithoba Bachelor, the court stated that there are two necessary conditions to be satisfied before granting leave for amendment of pleadings:

1. This grant of leave should not leads to the injustice to other party.
2. This Amendment of pleadings is necessary for determining the real question of controversy between parties.

In the case of Rajkumar Gurawara (Dead) Thr. L.Rs. vs S.K. Sarawagi And Co. Pvt. Ltd. And Anr, the honorable Supreme Court stated certain conditions when amendments of Pleadings can be allowed they are:

- When nature of the case will change by allowing application for amendment of appeal
- When a new cause of action arise by allowing application of an amendment
- When Amendments of Pleadings defeats the law of limitation.

Other points on which Amendments of Pleadings is granted:

- When the application of amendment is filed to avoid multiplicity of suits.
- When parties in the plaint or written statements wrongfully described.
- When the plaintiff omits to add some properties to the plaint.

**Amendment of Pleadings when refused:**

1. Application of amendment of Pleadings is rejected by the court when this amendment is not necessary for determining the real question of controversy between parties.
2. Application of amendment of pleadings is rejected when it leads to the introduction of a totally new case. In the case of the Modi Spg. Mills v. Ladha Ram & sons<sup>7</sup> Supreme Court held that “ the defendant cannot be allowed to change completely the case made in certain paragraphs of the written statement and substitute an entirely different and new case”.
3. When the Plaintiff or defendant is negligent
4. When proposed alteration or modification is unjust
5. Application for Amendments of Pleadings is refused when it violates the legal rights or cause injustice to the other party
6. Leave to amend is refused when it leads to the needless complications in the case.
7. Leave to amend is refused when there has been excessive delay by the parties in filing the suit.
8. Application of Amendment is refused when it changes the nature of the disputes



9. The court will not grant application of amendment of pleadings if it is made with mala fide intention.
10. Where several opportunities are given to parties to apply for amendment of pleadings. But they failed to make an application.

### **Step by Step procedure for filing an application for Amendment of Pleadings**

**Step 1** – Firstly the Plaintiff or Defendant who wants to amend its pleadings can write an application for the amendment of pleadings to the concerned civil court

**Step 2** – After drafting the application applicant needs to produce the application before the concerned civil judge.

**Step 3** – He has to pay a required court fee under court fees Act, 1870.

**Step 4**- Applicant needs to tell the purpose of the alteration in his application.

**Step 5** – Judge will read the application and if he thinks fit that this alteration or amendment is necessary for the purpose of determining the real questions in controversy between the parties Than he will grant permission for amendment for pleading.

**Step 6** – After getting the order from the court, the applicant needs to file new pleadings within the prescribed time and if no time has been prescribed by the court then he needs to file it in 14 days from the date of order.

**Step 7** – He also needs to give a copy of altered pleadings to the opposite party

## **Can the pleadings be amended if the suit is debarred by the Limitation Act**

1. In the case of *L.J. Leach & Co. Ltd. v. Jardine Skinner & Co*<sup>8</sup>, the Supreme Court stated that court can decline the application of amendment of pleadings if it is debarred by the Limitation Act. But the court has discretionary power to allow this application to secure ends of justice. The limitation can be ground for rejecting the application but the court can allow if the court thinks that amendment is necessary.
2. In the case of *South Konkan Distilleries & Anr v. Prabhakar Gajanan Naik & Ors*<sup>9</sup>, the court stated that it is settled principle that court can disallow the application of amendment if on the date of the filing of Application it is barred by the limitation. But this not mean that court cannot order grant for Application. For securing the interest of justice, the court has discretionary power to allow application of amendment of pleading.
3. In the case of *Pankaja & Anr v. Yellappa (D) by LRs & Ors*<sup>10</sup>, the court held that there is no settled principle that which states that court can reject the application of amendment if on the date of filing the application it is barred by limitation. The court stated the discretion to allow or not to

- allow application depends on the factual background of the case. If facts & circumstance of the case clearly establishes that this amendment is necessary to determine the cause of action and to avoid further litigation then the court should allow this application.
4. In the case of Ragu Thilak D. John v. S. Rayappan<sup>11</sup>, the court stated that it is disputed fact that application of amendment will be allowed or not when it is barred by the Limitation. But in many cases, the issue of limitation is made an issue in the suit, In those cases, application of amendment is allowed for disposing of the case.
  5. In the case of Vishwambhar v. Laxminarayan<sup>12</sup>, the court held that application for amendment of Pleading is to relate back to a filing of the date of application not to the date of filing of the suit.

### **Why Order 6 Rule 17 is been criticized?**

- Application of the Amendments delays Justice. Arun Mohan, senior lawyer-author of the book called “Justice, Courts, and delays” tells in his book that almost 80% of the application for the amendment is filed with the sole objective of delaying the proceedings.
- One of the big challenges faced by the Indian courts is the backlog of the cases. Civil court is already burdened with lot many cases and amendment of pleadings puts more burden on the civil courts
- Order 6 Rule 17 is the most misused law.
- It is a hindrance to speedy disposal of the matter
- It has more possibilities & chances of violation of legal rights of other side.

- Sometimes it is difficult to find the real question of controversy between parties

- The controversy between Amendment of proceedings and the Limitation is still not settled. In different cases, there are different interpretations of this rule.
- Many applicants with the mala fide intention are filing the application for amendment. It is not easy for the civil court to establish mala fide intention of the parties.

### **What happens when an applicant fails to amend in a prescribed time?**

#### **Provisionon : Order VI Rule 18 Civil Procedure**

*18. Failure to amend after order : 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, or if 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.*

Order VI rule 18 states that when a party had application for amendment and it is allowed by the court through an order. But the party does not amend it within the time prescribed in the order or if no time is prescribed, within the fourteen days from issuance of order then the party will be not permitted to amend.

#### **Conclusion**

Pleadings are the backbone of every civil suit. Pleadings can be in Plaint or Written Statements form. Amendment of pleadings means the alteration,

modifications & amendment in original pleadings by an application to the court.  
For avoiding

## MCQ

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**1. Which of the following deals with the time for inspection when notice given in the Code of Civil Procedure?**

A. Order 16, Rule 12 B. Order 4, Rule 13 C. Order 6, Rule 10 D.  
Order 11, Rule 17

**Ans. D**

**2. Which of the following deals with the statement and production of evidence in the Code of Civil Procedure?**

A. Order 12, Rule 5 B. Order 14, Rule 20 C. Order 18, Rule 2 D.  
Order 11, Rule 7

**Ans. C**

**3. Which of the following deals with the right to challenge non-appealable orders in appeal against decrees in the Code of Civil Procedure?**

A. Order 43, Rule 1A B. Order 31, Rule 9 C. Order 22, Rule 18 D.  
Order 9, Rule 10

**Ans. A**

**4. In order for that a decision in a former suit may operate as res judicata, the court which may decide that suit must have been?**

I. A civil court of competent jurisdiction

II. A court of exclusive jurisdiction III. A court of concurrent jurisdiction

'competent to try the subsequent suit'

IV A court of limited jurisdiction competent to try the issue raised in the subsequent suit

A. Either I or III B. Either II or III C. Either III or IV D. All of these

**Ans. D**

**5. In transaction for transfer or delivery of the property attached, where the contract is executed and registered before attachment, the mischief of sub-s (1) shall not apply. However in which of the following situation it applies?**

A. Where the property is transferred and registered after attachment

B. Where the property is transferred before attachment but registration takes place after the attachment

C. Both (A) and (B) D. None of these

multiplicity of suits, the court allows application of the amendment of pleadings. But it is true that the amendment of pleadings is a major reason for the delay in the justice. The court should allow applications for an amendment which is made in good faith and determine the real question of controversy between the parties. The court should not allow an application which is made with the mala fide intention or to delay the proceedings. Amendments of Pleadings is a good law to correct mistakes in pleadings but it should be allowed with due care and diligence.





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