



FACULTY OF JURIDICAL SCIENCES

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LECTURE TEN

Furthermore, in case of Olympic Industries v. Mulla Hussainy Bhai Mulla Akberally & Ors.⁷ the Hon'ble Supreme court held that even by filing an amendment or additional written statement, it is open to defendant to add a new ground of defence or to substitute or alter the defence or even to take inconsistent pleas in the written statement so long as the pleadings do not result in causing grave injuries/irrecoverable prejudice to plaintiff. It was further observed that mere delay is not sufficient to refuse amendment of pleadings or an additional written statement. If there is delay amendment of pleadings or filing of an additional written statement under Order 8 Rule 9 of the Code of Civil Procedure, 1908 where no prejudice was caused to the party opposing such amendment or acceptance of additional written statement then it could be easily be compensated by cost.

Apart from that, even if the examination of a prosecution witness or his cross-examination is over, then also, it was open to the court to accept the additional written statement filed by the other party by putting some cost penalty for the delay.

Is amendment of pleadings different from the additional written statement?

Rule 17 of Order VI provides for amendment of pleadings. A pleading shall mean plaint and written statement.⁸ If the plaint is amended, the defendant gets a right to amend his written statement to answer the contentions put forward in the amended plaint. The defendant may file an additional written statement in respect of the matters covered by the amendment of the plaint.

While additional written statement is governed by Rule 9 of Order VIII which provides that no pleading subsequent to the written statement of a defendant other than by way of defence to set off or counterclaim shall be presented except by leave of the Court and upon such terms as the Court thinks fit within a fixed period a time for presenting the same of not more than thirty days for presenting the same.⁹ But the Court may, at any time, require a written statement or additional written statement from any of the parties. As a matter of practice, Courts allow the additional written statement to be filed after the plaint is amended. Such practice is recognised by the Supreme Court in case of Gurdial Singh and others v. Raj Kumar Aneja and others.¹⁰

Analysis

From the discussion above it can be analysed that the Court can grant leave on such terms as it thinks fit, however, on its own at any time it, can require a party to file written statement or an additional written statement from any of the parties and fix the time period, once the leave is granted, either the party may file a supplementary statement¹¹ or the defendant upon the

allegations made in the plaint may make additional pleas 12. However, no supplemental written statement can be filed after the Plaintiff's case is closed. Rule 9, therefore, invests the Court with the widest possible discretion and enables it to accept a written statement filed subsequently, after the settlement of the issues upon such terms as the Court thinks fit.

It may also be worthwhile to notice that the rules of procedure like the provisions of Order 8, Rule 9 of the Code of Civil Procedure are aimed at not only advancing the cause of justice but also doing substantial justice between the parties. In no case, the rule of procedure can be brought to be interpreted in a manner, which may thwart the judicial process. The ultimate aim of all laws including procedural laws has to finally set at rest controversies between the parties.

MCQs-

i. where there are two or more defendant the summons can be made only to one of the defendant.

- A.truee
- b.false
- c.partially true
- d.partially false

ii. Whenever practicable a summon must be served to the defendant in person or to his authorised _____.

- a.agent
- b.member
- c.both of above
- d.non e of theabove

iii. RPAD stands for

- a. registered post acknowledgment due
- b. registered pick acknowledgment due
- c. registered post allocation due
- d. relevant post acknowledgment due

iv. an objection to service of summon should be raised at earliest opportunity. If not taken at that opportunity it is deemed to have been _____.

- a.served
- b.affixed
- c.waived
- d.none of the above

v. which is the most important legal documents required to be executed between the seller and the purchaser to complete the transaction at the time of purchasing a property.

- a. deed
- b. contract deed
- c. sale deed
- d.registered document