

Civil Procedure Code Any person adversely affected by the action or threat of another as to his right to property or status is required to get the dispute decided through the civil court by presenting a plaint before it and obtaining a decree, and at times to execute the decree if his adversary does not comply with it. In entertaining and deciding a suit or proceedings the civil court follows the procedure laid down in the Code of Civil Procedure 1908.

The Code, in addition to the rules in 155 sections, contains provisions regarding jurisdiction of civil court, stay of suit, *res judicata*, place of suing, institution of suits, summons to the defendants and witness, judgment and decree, interest, costs, compensatory cost, execution of decree and order, limitation of time for execution of decree, arrest and detention of defendant or judgment debtor in civil prison, attachment and sale of property, issue of commission, suits by or against the government or public officers in their official capacity, suits by aliens and by foreign states, suits by or against foreign rulers, ambassadors and envoys, interpleader suits, special cases for the opinion of court, suits relating to public nuisance and public charities, supplemental proceedings appeal from decree or order, references to High Court , reviews of decree or order, revisions to the High Court , special provisions relating to the High Court , rules in the first schedule and other provisions regarding rule making, and miscellaneous provisions such as exemption from personal appearance, arrests, language of subordinate courts, amendments of judgments, decrees or orders, extension of time, miscellaneous proceedings, inherent power of the court etc.

Rules contained in the first schedule of the Code of Civil Procedure provide detailed provisions regarding parties to the suit, frame of suits, recognized agents and advocates, institution of suits, issue and service of summons, pleadings, plaint, written statement and set off, appearance of parties and consequence of non-appearance, examination of parties by the court, discovery and inspection, admissions, production and return of documents, framing of issues and determination of suit on issues of law or on issues agreed upon, disposal of the suit at the first hearing, summons and attendance of witnesses, adjournments, hearing of suit and examination of witnesses, affidavits, judgment and decree, execution of decrees, and orders by delivery of property, attachment and sale of property and other modes, death, marriage and insolvency of parties and substitution of parties, withdrawal and adjustment of suits, payment into court, security for cost, commissions to examine witnesses, for local investigations, to examine accounts, and to make partition, suits by or against government or public official in their official capacity, suits by or against military or naval men or airmen, suits by or against corporations, suits by or against firms and persons carrying on business in names other than their own, suits by or against trustees, executors and administrators, suits by or against minors and persons of unsound mind, suits by paupers, suits relating to mortgage of immovable property, interpleader suits, special cases, summary procedures on negotiable instruments, arrest and attachment before judgment, temporary injunctions and interlocutory orders, appointments of receiver, appeals from decrees, appeals from orders, pauper appeals, references, reviews, miscellaneous provisions, and provision relating to High Court and Small Cause Courts.

A suit or proceedings is regulated by the aforesaid provisions of the Code of Civil Procedure and the provisions of the Qanun-e- Shahdat Order and Limitation Act. Unless a lawyer is conversant with the aforesaid provisions he cannot successfully file and proceed with or defend a civil suit, nor can a judge properly adjudicate the same. Civil suits and proceedings cannot be started and

proceeded with or defended by a layman as the rules of procedure of civil cases is full of technicalities for which a competent lawyer fully conversant with the rules of procedure is to be engaged.

The Civil Procedure Code (C.P.C.) is to regulate the functioning of civil courts. CPC lays down the rules in which a civil court is to function, which may be summed up as follows:

- Procedure of filing the civil case.
- Powers of court to pass various orders.
- Court fees and stamp involved in filing of case.
- Rights of the parties to a case, viz. plaintiff and defendant
- Jurisdiction and parameters within which the civil courts should function.
- Specific rules for proceedings of a case.
- Right of Appeals, review

Essentials of a suit. The main essentials of a suit are as under:

(1) The parties:

In every suit there is at least one plaintiff and one defendant. There may of course, be more than one plaintiff or more than one defendant if more persons are affected by the transaction out of which the cause of action arises.

(2) Cause of action:

Bases of a suit are the causes of action by which is meant the circumstances leading to a suit. Cause of action consists of every fact which is necessary to be proved to entitle the plaintiff to a decree. There cannot be a suit without cause of action. Further, a cause of action must be antecedent to a suit. In other words, no suit can be filed unless a cause of action has arisen.

(3) Subject-matter:

The subject-matter means the right of property which is in dispute. The object of the suit is to have a adjudication upon the rights of the parties with regard to the subject-matter in dispute.

(4) Relief:

The object to the plaintiff in a suit is to leave a particular relief. The relief claimed should be specially stated in the plaint, if a person is entitled to more than one relief in respect of the same cause of action he must claim all the relief. He can of course reserve his right to sue separately in respect of one or more relief's but that can be done only with the leave of the court.

Different stages of a suit: Following are the different stages of a suit.

(1) Institution of a suit:

The suit is instituted by presenting a plaint to the court or to such officers as the court appoints on this behalf. On such presentation the plaint is scrutinized to satisfy that it shows a cause of action, the relief claimed, sufficiency of court-fee limitation and the jurisdiction of the

court. When the court is satisfied on the points noted above it admits the plaint and registers and numbers it.

(2) Issue and service of summons:

After admission of the plaint summons are issued to the defendants with a copy of plaintiff requiring him to appear and written reply the claim of the plaintiff.

(3) Written statement:

When service of summons is effected on the defendant he appears before the court on the date fixed and files a written statement of his defence dealing with each allegation of the plaint and admitting or denying each allegation.

(4) Discovery:

Every party is entitled to know the nature of his opponent's case and he is entitled to obtain admission from his opponent. The process by which the admissions are obtained is technically termed as discovery.

(5) Issue:

When the defendant has filed written statement and discovery has been made on behalf of the parties, issues are framed. The court examines the plaint. The written statement and strike issues which in other words mean points in dispute.

(6) Evidence:

After framing the issues the evidence of the parties is recorded according to the issues framed. The party on whom lies the onus of proof begins the evidence and the evidence of the opposite party is taken afterwards.

(7) Arguments:

After taking the evidence the arguments of the parties are heard by the court.

(8) Judgment:

After hearing the arguments of both the parties the court either pronounces the judgment at once or it reserves the judgment which is delivered later on the same day or other day so fixed.

(9) Decree:

After the judgment has been announced, a decree drawn in favour of the successful party.

10. Execution:

Execution is the final stage of a suit. By execution is meant the process by which a decree is satisfied. The execution is initiated on the application of the successful party.

PLEADINGS

“Pleading” shall remain plaint or written statement.

No party could be allowed to make out a case for which no foundation was laid in pleadings. Point requiring factual inquiry, if not raised in written statement defendant could not be

permitted to lead evidence in respect of that point and if through oversight evidence was brought on record, same could not be considered. Party was not permitted to deviate from his pleadings not could the court set up a different plea for a party and decide the suit on that basis much less at appellate stage.

PLEADING TO STATE MATERIAL FACTS AND NOT EVIDENCE

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, and the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs numbered consecutively-dates, sums and numbers shall be expressed in figures.

Pleading of the parties has to contain only material facts and are not required to contain the gist of evidence and names of witnesses.

Plaintiff should state such facts in the pleadings which may put the defendant on his guard and tell him to meet them when the case comes on trial. Every pleading should contain only a statement in a concise form of the material facts on which the party relies for his claim or defence as the case may be. Pleading should not contain the evidence through which such material facts are to be proved.

FORMS OF PLEADING

The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleading.

PARTICULARS TO BE GIVEN WHERE NECESSARY

In all cases in which the party pleading relies on any misrepresentation fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items of necessary) shall be stated in the pleading.

FURTHER AND BETTER STATEMENT OR PARTICULARS

A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

Plaintiff could not be non-suited merely on ground that other details of time and place to Talabs, and names of witnesses, etc. had not been specifically mentioned in plaint. If defendants had any difficulty in filing their written statement, they could apply to Trial Court for further and better particulars. Plaintiff could not be non-suited in such circumstances.

CONDITION PRECEDENT

Any condition precedent the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, and averment of the performance or occurrence of all conditions shall be implied in his pleading.

Giving a detailed narration of the evidence in pleadings was not required as the same was likely to be produced during recording of evidence. Mere mentioning of material facts in the pleadings was sufficient regarding which the parties were required to produce their evidence at the trial stage.

DEPARTURE

No pleading shall, except by way of amendment, raise any new ground of aim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

DENIAL OF CONTRACT

Where a contract is alleged any pleading, a bare denial of the same by the opposite-party shall be construed only as a denial of fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

Question of fact having been expressly and unequivocally admitted in the pleadings, would not require any proof.

EFFECT OF DOCUMENT TO BE STATED

Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

MALICE, KNOWLEDGE, ETC.

Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out of circumstances from which the same is to be inferred.

NOTICE

Wherever it is material to allege notice to a person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

Plaintiff had to mention in the plaint that such notice was given and the details of the notice need not be described.

IMPLIED CONTRACT, OR RELATION

Wherever any contract or any relation between any person is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

PRESUMPTION OF LAW

Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (e.g. consideration for a bill of exchange where the plaintiff sues only on the bill and not for the considerations as a substantive ground of claim).

PLEADING TO BE SIGNED

Every pleading shall be signed by the party and his pleader (if any) provided that where a party to pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

Signing and verification of plaint. Provisions in O. VI, Rr, 14 15 & 17, C.P.C. with regard to signing and verification of plaint were mere matter of procedure and if a plaint was not properly signed or verified, but was admitted and entered in the register of suit, in it would not case to be a plaint and the suit could not be said not to have been instituted merely because of existence of mere defects or irregularities in the matter of signing and verification of the plaint. If defect in regard to the signature, verification or presentation of the plaint were cured on day subsequent to the date of filing the suit, date of institution of the suit or the date from which an amendment took effect, would not depend on the discretion of the court.

VERIFICATION OF PLEADINGS

- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified (on oath or some affirmation) at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the same.
- (2) The person verifying shall specify, by reference to the numbered paragraph of the pleading, what he verifies of his own knowledge and what he verifies upon information reviewed and belief to be true.

- (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

SIGNING AND VERIFICATION OF PLAINT

Provisions in O. VI, Rr. 14, 15 & 17 C.P.C. with regard to signing and verification of plaint were mere matter of procedure and if a plaint was not properly signed or verified, but was admitted and entered in the register of suit, it would not cease to be a plaint and the suit could not be said not to have been instituted merely because of existence of mere defects or irregularities in the matter of signing and verification of the plaint. If defect in regard to the signature, verification or presentation of the plaint were cured on day subsequent to the date of filing the suit, date of institution of the plaint was not to be changed to be subsequent date. Date of institution of the suit or the date from which an amendment took effect, would not depend on the discretion of the court.