

Order-08 Written statement, set-off and counter-claim

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²2. Subs. by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 58, for the heading "Written statement and set-off (w.e.f. 1st February, 1977). Order-08 Written statement, set-off and counter-claim

1. Written Statement :-

¹The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

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.";

STATE AMENDMENT

Bombay.-Its application to the State of Maharashtra in Order VIII for the existing rule 1 and its marginal note, the following rule and its marginal note shall be substituted as under: "(1) Written statement.-The defendant may and if so required by the Court shall within such time as may be specified in that behalf or within such extended, time as the Court may permit, present a written statement of his defence, after serving a copy thereof on the plaintiff or his pleader on or before the date fixed for presenting the same in Court for the use of the plaintiff a copy of the written statement while presenting the same in Court: Provided that the first adjournment for filing the written statement shall not ordinarily exceed four weeks and no further adjournment shall be granted except for reasons to be recorded in writing." ²

1. Rule 1 Shall be Substituted by THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002. in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002
2. Vide the High Court Notifn. No. P. 0102/77 (w.e.f. 1st October. 1983).

1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him :-

1. -

(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.

² "(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.";]

1. Inserted vide " Order-08 Written statement, set-off and counter-claim" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

2. Rule 1A, Sub-Rule (3) Shall be Substituted by THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002. in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002

2. New facts must be specially pleaded :-

The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction as, if not raised, would not 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.

3. Denial to be specific :-

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 (act of which he does not admit the truth except damages.

4. Evasive denial :-

Where a defendant denies an allegation of fact in the plaintiff 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 circumstance, it shall not be sufficient to deny it along with those circumstances.

5. Specific denial :-

¹[(1)] Every allegation of fact in the plaint, if not denied specifically or 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: Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

² [(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]

1. Renumbered by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 58 (w.e.f. 1st February, 1977).

2. Ins. by C.P.C. (Amendment) Act No. 104 of 1976.

6. Particulars of set-off to be given in written statement :-

(1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiffs demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fall in the same character as they fall in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.

(2) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off ; but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

6A. Counter-claim by defendant :-

(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has

expired, whether such counter-claim is in the nature of a claim for damages or not: Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to the plaints.

6B. Counter-claim to be stated :-

Where any defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

6C. Exclusion of counter-claim :-

Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such an application make such an order as it thinks fit.

6D. Effect of discontinuance of suit :-

If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

6E. Default of plaintiff to reply to counter-claim :-

If the plaintiff makes default in putting in a reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him, or make such order in relation to the counter-claim as it thinks fit.

6F. Relief to defendant where counter-claim succeeds :-

Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

6G. Rules relating to written statement to apply :-

The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim.]

7. Defence or set-off or counter-claim founded upon separate grounds :-

Where the defendant relies upon several distinct grounds of defence or set-off ¹ [or counter-claim] formed upon separate and distinct facts they shall be stated, as far as may be separately and distinctly. Reasons for the change.-This rule has been amended to include counter-claim therein.

1. Ins. by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 58 (w.e.f. 1st February, 1977).

8. New ground of defence :-

Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off ¹ [(or counter-claim)] may be raised by the defendant or plaintiff, as the case may be, in his written statement.

1. Ins. by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 58 (w.e.f. 1st February, 1977).

8A. Duty of defendant to produce documents upon which relief is claimed by him :-

**¹ *]

1. Omitted for " (1) 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 a copy thereof, to be filed with the written statement. (2) 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. (3) Nothing in this rule shall apply to document produce,- (a) for the cross-examination of the plaintiffs witness, or (b) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or (c) handed over to a witness merely to refresh his memory.) ", vide " Order-08 Written statement, set-off and counter-claim" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

9. Subsequent Pleadings :-

¹ No pleading subsequent to the written statement of a defendant other than by way of defence to 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.

1. Rule 9 and 10 Shall be Substituted by THECODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002 [22 of 2002]. in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002.

10. Procedure when party fails to present written statement called for by court :-

¹ Where any party from whom a written statement is required under rule I 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."

1. Rule 9 and 10 Shall be Substituted by THECODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002 [22 of 2002]. in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002.