

## **Order-37 Summary Procedure**

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## **Order-37 Summary Procedure**

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#### **1. Courts and classes of suits to which the order is to apply**

:-

(1) This Order shall apply to the following courts, namely :

- (a) High Courts, City Civil Courts and Courts of Small Causes; and
- (b) other Courts:

(2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely :

- (a) suits upon bills of exchange, hundies and promissory notes;
- (b) suits in which the plaintiff seeks only to recover a debt, or liquidated demand in money payable by the defendant, with or without interest, arising,-

(1) on a written contract; or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.]

High Court Amendment Bombay.-The following sub-rule (1) of Order XXXVII shall be substituted as under: 1. (i) This order shall

apply to the following courts, namely : (a) High Court, City Civil Courts and Courts of Small Causes, and (b) such other courts as may be specifically empowered in this behalf by the High Court from time to time by a notification in the official Gazette: Provided that in respect of the courts referred to in Cl, (b), the High Court may, by notification in the official Gazette, restrict the operation of this order only to such categories of suits as it deems proper and may also from time to time, as the circumstances of the case may require by subsequent notification in the official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this order as it deems proper." <sup>1</sup>

1. Vide Notifn. No. P 0102/77 (w.e.f. 1st October, 1983).

## **2. Institution of summary suits :-**

(1) A suit, to which this Order applies, may , if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain-

(a) a specific averment to the effect that the suit is filed under this Order;

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(c) the following inscription, immediately below the number of the suit in the title of the suits, namely :

(2) The summons of the suit shall be in Form No. 4 in Appendix B or in such other form as may, from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.]

## **3. Procedure for the appearance of defendant :-**

(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an

address for service of notices on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4-A in Appendix B or such other form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just: Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious : Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment,-

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such

security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith;

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit].

**4. Power to set aside decree :-**

After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

**5. Power to order bill, etc., to be deposited with officer of Court :-**

In any proceeding under this Order the Court may order the bill, hundi, or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

**6. Recovery of costs of noting non-acceptance of dishonoured bill or note :-**

The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

**7. Procedure in suits :-**

Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.