

Q1 What is Law relating to Amendment of pleadings? Can a court refuses amendment of pleadings ? If yes under what circumstances ?

Ans **Order VI Rule 16** empowers the court to order any pleading to be struck out or amended at any stage of the proceedings.

Striking out pleadings:

Both plaintiff and defendant are free to raise their contentions and make their averments in the plaint and written statement respectively for the consideration of the court. Ordinarily, the court does not interfere with the same by directing any amendment thereto or by striking out certain pleadings. However, the court may order at any stage of proceedings that certain pleadings be struck out or amended if it finds that (i) the pleadings of any party is unnecessary, scandalous, frivolous or vexatious; or (ii) the pleadings may tend to prejudice, embarrass or delay the fair trial of the suit; or (iii) the pleadings are abuse of the process of the court.

In ***Abdul Razak v. Mangesh Rajaram Wagle***, it was held that normally, a court cannot direct or dictate the parties as to what should be their pleadings and how they should prepare their pleadings. If the parties do not violate any statutory provision, they have the freedom to make appropriate averments and raise arguable issues. The court's power to strike out any pleading at any stage of the proceedings can be exercised in either of the three eventualities i.e., where the pleadings are considered by the court unnecessary, scandalous, frivolous or vexatious; or where the court is satisfied that the pleadings tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise considered as an abuse of the court .

Amendment of pleadings :

When pleading of a party is defective or incomplete, it can be amended either by compulsory amendments or by optional amendments. Amendment of leadings may be sought by either party at any stage of the suit by making an application in that behalf. However, the application for amendment needs to be allowed by the court. No amendment is possible without court's permission. The courts have wide discretion in dealing with an application for amendment.

Compulsory amendments :

Compulsory amendments are those which are ordered to be carried out in the pleadings of a party at the instance of opposite party. When the pleading of a party suffers from defect or is incomplete, the opposite party may have recourse to following remedies :

(a) Apply for further and better particulars :

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When a party fails to furnish any particulars in his pleadings, the other party may apply for further and better particulars of any matter stated in the pleadings. The court may order suo motu for furnishing better particulars. The application for better particulars must be moved within reasonable time after necessity arises otherwise the application may be refused on the grounds of delay. The order for further and better particulars may be refused: (i) if the information sought is not in possession of either party and cannot be obtained without great difficulty; (ii) where particulars cannot be given which are merely evidence of material fact; and (iii) if the suit is for money due to plaintiff, no particulars can be ordered from him.

(b) Apply for striking out or amending of the objectionable portion of the opponent's pleadings : [Order VI, Rule 16]:

The court is empowered to order any matter in the pleading to be struck out or amended which may be unnecessary, scandalous, frivolous trail of the suit; or which is otherwise an abuse of the process of the or vexatious; or which may tend to prejudice, embarrass or delay the fair court. Such order may be passed at any stage of the proceedings.

c) Apply for rejection of plaint:

If the plaint is so defective that it does not disclose any cause of action, the opposite party may apply for rejection of the same. Rejection of plaint may be ordered in cases where: (i) it does not bring out any cause of action; (ii) the relief claimed is undervalued and the plaintiff fails to correct the valuation within the time prescribed by the court; (iii) the plaint is written on a paper insufficiently stamped and the plaintiff fails to supply requisite stamp paper within the time fixed by the court; and (iv) the suit is barred by any law.

Optional amendments :

Optional amendments are those which are ordered to be carried out by a party in his own pleadings. When the pleading of a party is defective or incomplete, he may himself move an application to revise it in following ways -

(a) File further and better particulars:

If a party discovers a new matter that was not within his knowledge at the time of filing of original pleadings; or certain documents have come into his possession whose existence was unknown; or some developments have taken place after filing of original pleadings, he may add them in his pleadings but only with the leave of court. If he omits to deliver such new matter or subsequent developments, he will not be entitled to adduce evidence on those matters or developments.

(b) File additional pleadings :

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Where the original pleadings were incomplete, the party may file additional pleadings, but only with the leave of the court. The additional pleadings should not raise any new ground of claim. It should also not contain any allegation of the fact inconsistent with previous pleadings.

(c) Amend the pleadings : [Order VI, Rule 17] :

If the plaintiff or the defendant desires to amend his pleadings, he has to apply to the court for permission. The court may at any stage of proceedings allow the applicant to alter or amend his pleadings. However, no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that the party could not have raised the matter earlier. All such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The amendment should not change the basic character of the suit.

No amendment to be allowed after commencement of trial:

The proviso attached to Rule 17 says that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that the party could not have raised the matter earlier. The meaning of the expression "commencement of trial" was explained by Apex court in the following case.

In **Baldev Singh v. Manohar Singh**, the Supreme court held that the expression "commencement of trial" used in the proviso under Order VI, Rule 17, C.P.C. must be understood in a limited sense as meaning the final hearing of the suit, examination of witness, filing of documents and addressing of arguments.

Object of amendment:

The rationale behind the rule of amendment is that the courts should try the cases on merits and hence should allow all the amendments necessary for determining the real question in controversy between the parties provided no injustice or prejudice is caused to the other side.

In **Rajesh Kumar Aggarwal v. K.K. Modi**," the Apex Court observed that the object of Order VI, Rule 17 is that the courts should try the merits of the case that come before them. The courts should allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. The rule of amendment is essentially a rule of justice, equity and good conscience. The power of amendment should be exercised in larger interest of doing full and complete justice to the parties before the court.

When amendment can be allowed:

It is very clear that no amendment can be made without leave of the court. Therefore, the party desirous of amending the pleadings is required to apply to the court for seeking permission to amend.

The amendment may be allowed by the court at any stage of the proceedings. The amendment may be allowed even after commencement of trial if the court is satisfied that in spite of due diligence, parties could not have raised matter earlier.

Principles of amendment :

The courts are vested with the power to allow the amendment in the pleadings. The courts must exercise the power and liberally allow the amendment at any stage of the proceedings if they are satisfied that the proposed amendment is necessary for determining the real question in dispute between the parties.

The illustrative principles of amendment as deduced from various case laws are as under :

(a) Amendment may be allowed if :

- (i) no serious prejudice is caused to the other side;
- (ii) it does not seek to change or alter the basic character of the suit;
- (iii) it seeks to make the claim more precise so as to enable the court to adjudicate upon it more satisfactorily.
- (iv) it is necessary for decision of real controversy between the parties concerned.
- (v) its object is fair and is not meant to abuse power of the court.
- (vi) it is for rectification of any clerical or typing mistake.

(b) Amendment may not be granted if :

- (i) it is not necessary for determining the real question in dispute between the parties.
- (ii) it causes serious injustice or irreparable loss to the other side.
- (iii) it leads to such an injury to the opposite party that cannot be compensated by costs.
- (iv) the prayer for amendment is not a bona fide one.
- (v) it seeks to wriggle out of an admission by the party.
- (vi) it seeks to substitute one distinct cause of action for another
- (vii) it seeks to change the subject-matter of the suit.
- (viii) it takes away from the other side a legal right accrued in his favour.

(ix) It is not in good faith.

(x) it would change the basic character of the suit.

(xi) it introduces a totally new case or a new cause of action.

(xii) it is sought at a very late stage of the proceedings i.e., after framing of issues and examination-in-chief.

Failure to amend after order : [Order VI, Rule 18] :

When the court grants permission to a party to amend his pleadings, such party must carry out amendment within the time prescribed by court or if no time is stipulated then within a period of fourteen days from the date of order of the court. If such party does not amend accordingly, he shall not be allowed to amend after expiration of such period. However, the court may extend the time.

Q2 Explain the powers of the executing court .

Ans COURTS BY WHICH DECREE MAY BE EXECUTED : Section 38] :

A decree may be executed either by the court which passed it, or by the Court to which it is sent for execution.

Provision of Section 38:

Section 38 declares that a decree may be executed by either of the two courts viz., the court which passed that decree or the court to which the decree is sent for execution.

Court is competent to execute its own decree :

When a court is empowered to enforce a decree, it is said to be competent to execute it. According to the provisions of this section, the court which passes the decree can always execute that decree.

Court to which decree is transferred is competent to execute it : A decree may also be sent to a court for execution. In such a case, the court to which a decree is sent for execution gets jurisdiction to execute it.

Who can apply for execution of decree :

The decree-holder is entitled to execute a decree passed by a court.

POWERS OF COURT IN EXECUTING TRANSFERRED DECREE [Section 42]

There is, no doubt, that a court has powers to execute the decree passed by it. A court may also transfer the decree passed by it to another court for execution either suo motu or on an application by the

decree-holder in this behalf on certain grounds. The question as to what are the powers of transferee court in relation to execution of such transferred decree is answered by this section.

Sub-Section (1):

This sub-section grants same powers to the transferee-executing court as are vested in the original court in relation to execution of decree transferred to it. It clearly says that the transferee court shall have the same powers in executing a transferred-decree, as if it had been passed by itself. It can punish those who disobey and obstruct the execution of transferred decree in the same manner as if it were the original court executing the decree passed by itself. The orders passed by such transferee-executing court in execution proceedings are subject to appeal as if the decree had been passed by itself.

Sub-section (2):

This sub-section provides that like original court passing the decree, the transferee court is empowered to: (i) send the decree for execution to another court (in accordance with the provisions of section 39); (ii) execute the decree against the legal representative of the judgment-debtor if the judgment-debtor is dead (in accordance with the provisions of Section 50); and (iii) order attachment of a decree.

Sub-section (3) :

This sub-section directs that if the executing court passes any order under sub-section (2), it shall send a copy thereof to the original court which passed the decree.

Sub-section (4) :

This sub-section imposes a restriction on the powers of the executing court. It provides that the transferee-executing court shall not enjoy the power to order execution at the instance of the transferee of the decree and the power to grant leave to execute such decree against any person other than such a person as is referred to in clause (b), or clause (c), of sub-rule (1) of rule 50 of Order XXI in the case of a decree passed against a firm.

EXECUTION OF DECREES PASSED BY CIVIL COURTS IN PLACES TO WHICH THIS CODE DOES NOT EXTEND : [Section 43]

This section contemplates a situation wherein a decree passed by a court situate outside India or situate in India but not governed by the provisions of this Code is required to be executed. It provides that the Indian courts have power to execute a decree passed by a court to which the Code does not apply.

EXECUTION OF DECREES PASSED BY REVENUE COURT IN PLACES TO WHICH THIS CODE DOES NOT EXTEND [Section 44]

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This section deals with the execution of decree passed by revenue court in those places to which the Code does not extend. It empowers the State Government to issue a gazette notification to declare that the decree passed by such revenue court shall be executable in the State in the same manner as the decree of a court in that State.

EXECUTION OF DECREES OUTSIDE INDIA [Section 45]

This section deals with execution of decrees passed by Indian courts in foreign territories. From the foregoing sections, it is clear that a court can send a decree passed by it to another court for execution and the transferee court can execute it as if it were executing a decree passed by itself. In the same manner, an Indian Court may send a decree passed by it for execution by another court situate outside India. However, there are two conditions- firstly the transferee court situate outside India must have been established by the Central Government and secondly; that the State Government must have issued a notification declaring that this section will apply. In the absence of either of these conditions, an Indian court has no jurisdiction to send its decrees for execution to the court situate in a foreign territory.

QUESTIONS TO BE DETERMINED BY THE COURT EXECUTING DECREE [Section 47]

Section 47 is the most important section in the Code relating to execution of decrees. It confers power upon the executing court to determine the questions relating to execution, discharge or satisfaction of the decree arising between the parties to suit. It further prohibits a separate suit for determination of such questions.

Sub-section (1):

Sub-section (1) categorically states that the court executing the decree shall determine all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree and not by a separate suit.

Sub-section (3) :

Sub-section (3) further adds that the court shall also determine the question whether or not any person is a representative of a party.

Explanation I and II:

Explanations attached to sub-section (3) clarify that a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit. A person who purchases a property in execution-sale shall be deemed to be a party to a suit.

Explanation II further provides that all questions relating to the delivery of possession of such property to such purchaser shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree.

Q3 What are the rules regarding institutions of suits ?

Ans Every person has inherent right to bring suit for ventilation of his grievance. Section 26 and Order IV of the First Schedule deal with institution of suits whereas Order II of the First Schedule deals with frame of suits.

INSTITUTION OF SUITS: [Section 26] :

(1) Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed,

(2) In every plaint, facts shall be proved by affidavit.

Section 26 provides substantial law relating to institution of suit. It says that every suit shall be instituted by presentation of a plaint. The language of the section suggests that in order to become a suit, it is necessary that the proceedings are instituted by presentation of a plaint. Any proceeding which does not commence with a plaint cannot be deemed to be a suit.

The section further provides that a proceeding instituted in such other manner as may be prescribed shall also be a suit. Thus, in the absence of a specific provision to the contrary, a proceeding which does not commence with the presentation of a plaint is not a suit.

Suits to be commenced by plaint: Every suit to be instituted by presenting a plaint: Register of Suits : [Order IV, Rule 1 and 21: A suit shall be instituted by presenting a plaint. Such plaint shall be presented in duplicate to the court or appointed officer. The plaint must comply with the rules contained in Orders VI and VII. A plaint shall not be deemed to be duly instituted unless it complies with these two requirements. The particulars of every suit shall be entered in the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

What is a plaint :

A plaint is a document by presentation of which in a civil court a suit is instituted. It can be described as an application made before the court about a wrong caused to the plaintiff by the defendant. It contains a statement of civil wrong caused to the plaintiff for redressal of which he has knocked the doors of the court.

A plaint must be signed and verified by the plaintiff. It has to be accompanied by proper court fee.

What is meant by presentation of plaint :

Presentation of plaint means delivery of plaint to the court or its officer. Such delivery can be made either personally or through a pleader. Sending the plaint by post is not sufficient. The presentation must be by delivery to the court or its officer either personally or by a pleader.

However, it is necessary that the plaint is presented before the appropriate court of law which is competent to entertain, hear and try the subject-matter of the plaint. A plaint presented in an incompetent court does not amount to institution of a suit.

The suit is said to be instituted when it is registered by the court.

What is meant by proving of fact by affidavit :

An affidavit is a written statement sworn before an officer having authority to administer oath. In other words, an affidavit is a declaration of facts made in writing which is duly sworn before a Magistrate or an officer having authority to administer oath. The person who makes the affidavit is called "Deponent". Every affidavit contains an averment to the effect that the statements made therein are true to the best of deponent's knowledge, information or belief.

Sub-section (2) has been inserted by the Amendment Act of 1999. It says that in every plaint, facts shall be proved by affidavit. It means that every plaint shall be in form of an affidavit duly sworn-in. The court considers the contentions made in an affidavit to be true.

In *Vidyawati Gupta v. Bhakti Hari Nayak*,¹ the Supreme Court observed that the expression "duly" used in Rule 1 (3) of Order IV, C.P.C. implies that the plaint must be filed in accordance with law. The rules of procedure are made to further the cause of justice and not to prove a hindrance thereto.

Provisions of Sections 15 to 20 deal with the place of suing. "Place of suing" means venue for trial. These sections declare a general rule that a suit shall be instituted in the court of lowest grade competent to try it and within the local limits of whose territorial jurisdiction the property is situate.

Thus, Sections 15 to 20 governed the selection of court for institution of civil proceedings in relation to movable and immovable properties. They regulate the forum for institution of a suit. These provisions prescribe the appropriate court in which a suit for property may be brought having regard to the situation of the subject-matter of the suit. They set out rules for assumption as territorial jurisdiction by Indian courts in matters within their cognizance. However, non-compliance of the provisions of these sections relating to place of suing is not fatal to the suit. If the plaintiff prosecutes remedy before a wrong forum and the suit is decreed, such decree is not null and void merely on the ground that it came to be passed by incompetent court.

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The actions contemplated by these sections can be classified into three categories: (i) the actions relating to immovable property; (ii) the actions relating to person or movable property; and (iii) the mixed actions partly relating to immovable property and partly personal. The first and third kind of suits have been dealt with under Sections 16 to 19. Section 20 deals with the second kind of suits.

COURT IN WHICH SUITS TO BE INSTITUTED:[Section 15] :

Every suit shall be instituted in the Court of the lowest grade competent to try it.

Ingredients of the provision:

An examination of the language reveals that there are two ingredients of this provision viz., (i) the Court must be of the lowest grade i.e., most inferior in the hierarchy; and (ii) such court must also be competent to try the suit. It may be noted that a decree passed in breach of first ingredient is not a nullity. The reason is that this provision lays down a rule of procedure and not of jurisdiction. It does not take away the jurisdiction of a superior court to try the suit. Hence, where a suit has been instituted in a competent but superior court and such court proceeds to pass a decree, it cannot be said that such decree is without jurisdiction. In view of this position, the decree passed by a superior competent court shall remain valid and executable.

SUITS TO BE INSTITUTED WHERE SUBJECT-MATTER SITUATE [Section 16] :

Section 16 provides for institution of suits in relation to immovable property in the Court within the local limits of whose jurisdiction the property is situate. The provision has various parts viz., (i) the opening expression "subject to the pecuniary or other limitations prescribed by any law"; (ii) clauses (a) to (f) enumerating the disputes in relation to immovable and movable property and institution of suit in relation to such disputes in the court within whose jurisdiction the property is situate; (iii) proviso to the effect that a suit relating to compensation for wrong to immovable property held by defendant may also be instituted in the Court within whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain; and (iv) explanation to the effect that "property" means property situate in India.

SUITS FOR IMMOVABLE PROPERTY SITUATE WITHIN JURISDICTION OF DIFFERENT COURTS : [Section 17] :

This section provides that where a suit relates to immovable property situate within the jurisdiction of different Courts, both the courts have in any of the Courts within the local limits of whose jurisdiction any territorial jurisdiction over such property and the suit may be instituted in any of the courts within the local limits of whose jurisdiction any portion of the property is situate.

It may be noted that the expression "may be instituted" is employed in the language. It is meant to afford choice to the plaintiff as to forum for instituting the suit. Where the property is situate in different jurisdictions, the plaintiff is free to exercise his option as to which court he would like to move for redressal of his grievance. The plaintiff can bring the suit in any court within whose jurisdiction a part of it is situate.

The proviso attached to this section enacts that in respect of the value of the subject matter of the suit, the entire claim must be cognizable by such Court. In other words, the subject matter of the suit must be within the pecuniary jurisdiction of the court.

PLACE OF INSTITUTION OF SUIT WHERE LOCAL LIMITS OF JURISDICTION OF COURTS ARE UNCERTAIN: [Section 18

Sub-section (1) deals with the situation wherein the jurisdiction of courts is doubtful. Sometimes it becomes difficult to say with certainty, that the property is situate within the jurisdiction of which court. The suit-property may be situate within the local limits of two or more courts but it is not sure which of the several courts has jurisdiction over such property. Such cases are dealt with by this section. It provides that where such uncertainty of jurisdiction is alleged and the court is satisfied that such uncertainty exists, it may record a statement to that effect and then proceed to entertain and dispose of the suit in relation to such immovable property. The decree passed by such court shall be legal and valid and shall have the same effect as if the property were situate within the local limits of its jurisdiction.

The proviso attached to this sub-section enacts that the court which entertains, hears and tries such a suit and passes a decree must be otherwise competent in respect of nature and value of the suit.

Sub-section (2) deals with the situation wherein a statement as to uncertainty of jurisdiction is not recorded and a decree is passed. If such decree is challenged on the ground that it was passed without jurisdiction, the Appellate or Revisional Court shall not allow the objection. However, where the Appellate or Revisional Court is satisfied that no reasonable ground as to uncertain jurisdiction of court existed and there is failure of justice, it may allow the objection as to jurisdiction.

When a decree is passed in a suit without any question being raised about want of territorial jurisdiction of the court to entertain the suit, the decree must be recorded as valid and binding and cannot be called in question in another Tribunal.

Essentials of Section 18:

The essential ingredients of Section 18 are summarized below :

- (i) There must be an allegation as to uncertainty of territorial jurisdiction of courts.

- (ii) The court must be satisfied that there is ground for the alleged uncertainty.
- (iii) The court must record a statement as to insure jurisdiction and thereupon proceed to entertain and dispose of any suit relating to that property.
- (iv) The Court who proceeds to entertain and try the suit must be competent as regards the nature and value of the suit.
- (v) The objection as to jurisdiction must be taken in the court of first instance otherwise the Appellate or Revisional Court shall not allow such objection unless there has been a failure of justice.

SUITS FOR COMPENSATION FOR WRONGS TO PERSON OR MOVABLES: [Section 19]

Section 19 deals with a situation wherein the cause of action arises at one place and the defendant resides or carries on business or personally works for gain at another place. The cause of action arises at the place where wrong is done. Section 19 provides that in such cases, two courts shall be competent to entertain and try the suit for compensation :-(i) the court within whose local limits of jurisdiction wrong is done; (ii) the court within whose local limits of jurisdiction the defendant resides or carries on business or personally works for gain. This section also grants option to the plaintiff to move any one of these two courts having jurisdiction.

Essentials of the section :

The provisions of this section can be invoked only when following conditions are satisfied :

- (i) There must be a wrong done to a person or to movable property.
- (ii) There must be a suit for compensation for that wrong.
- (iii) The wrong must have been done at one place and the defendant must reside, or carry on business, or personally work for gain at another place.

OTHER SUITS TO BE INSTITUTED WHERE DEFENDANTS RESIDE OR CAUSE OF ACTION ARISES : Section 20

Section 20 is a general section. It may be called as a section because it covers all other cases relating to forum which do not fall within the letter of Sections 15 to 19.

Purpose of Section 20:

This section is designed to bring justice as near as possible to every man's doorsteps so as to ensure that the defendant is not put to undue trouble and expense of traveling long distances for his defence. Thus the purpose of the provisions of this section is to save the defendant from unnecessary difficulties.

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However, when two or more courts are vested with the jurisdiction to entertain and try a suit, the choice of forum lies with the plaintiff. It is the plaintiff who decides that out of several competent courts, which court he would like to move. The defendant cannot insist on his being sued at a particular forum. Moreover, the plaintiff and defendant cannot confer upon a forum the jurisdiction by mutual consent or agreement

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