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PLEADINGS

Stressed the need that the pleadings should be concised and to the point. Therefore, it goes without saying that a successful lawyer should have the clear grasp of principles of pleading. As per Order VI, Rule 1 of the First Schedule of the Code of Civil Procedure, 1908, 'Pleading' means plaint or written statement.

Importance of Pleadings:

It is one of the important functions of an advocate. The importance of the art of pleadings is obvious inasmuch as the whole case of a party depends upon how skillfully it is drafted by an advocate. A great care should be exercised while drafting the pleadings because if the pleadings are not properly framed the party in question would be in a disadvantageous position.

The case of a party must be set out in his pleadings. The relief cannot be claimed on the grounds which are not contained in the pleadings. Therefore, it is essential to ensure that the specific pleadings setting out the material facts must be given in the pleadings in order to claim the relief on that basis. The immaterial or vague matter should be avoided and the pleadings should be properly framed. It is the case which has been pleaded that has to be proved by the concerned party and the verdict of the court cannot

be given upon the grounds not found in the pleadings of the party. [*Mishrilal Sunder Lal v. State of M.P.*, 1986 MPLJ

Object of Pleadings:

The main object of the procedure of Pleading is to ensure that both like parties at dispute should know the exact points of such dispute between them so as to bring forward their own case and evidence to determine the issue. Odgers in his *Pleadings and Practice* observes:

'The defendant is entitled to know what it is that the plaintiff alleges against him, the plaintiff in his turn is entitled to know what defence will be raised in answer to his claim. The defendant may dispute every statement made by the plaintiff, or he may be prepared to prove other facts which put a different complexion on the case. He may rely on a point of law or raise a cross-claim of his own. In any event, before the trial comes on it is highly desirable that the parties should know exactly what they are fighting about, otherwise they may go to great expense in procuring evidence to prove at the trial facts which their opponents at once concede.

Fundamental Rules of Pleadings:

1. Facts and not Law—A pleader's duty is to set out the facts to be relied upon and not the law

or legal inferences. It is not enough to allege that the defendant was guilty of misconduct. Facts regarding the conduct to be observed by the defendant, misconduct of which is pleaded, is based, as also the facts which constitute the misconduct in the plaintiffs opinion, a breach of that conduct should be alleged. The court will examine and infer from them that the defendant has been guilty of misconduct. The plaint should only state facts leading to the cause of action against a defendant. Plaintiff is not required to plead the law under which he claims a decree, as also it is not essential for the defendant to mention points of law in the written statement. Pleading of facts is necessary.

It is well settled that the basis of the judgment cannot be the grounds which have not been pleaded, it is necessary that the pleadings should be specific and not vague. The plaint must contain the facts otherwise it will be considered to be bad. In a case of breach of contract, the specific terms and conditions agreed between the parties must be stated in the suit. The plaintiff should allege how the breach has been committed by non-fulfillment of the such and such conditions. Merely to state in the plaint that a breach of contract has been committed by the defendant will not suffice as it is the inference drawn by the plaintiff.

2. Pleading of Material Facts.—This is another fundamental rule that pleading should contain only material facts on which the Plaintiff and Defendant rely for their respective cases. It means that all essential facts shall be alleged by the parties for the claim and defence and not the irrelevant ones. Now the question arises what facts constitute material facts. The words 'material facts' mean the facts which are necessary and relevant and the concerned party must prove those facts at the trial

unless, of course, admitted by the opposite party. A pleader, after listening to his client about the case must be able to decide as to which facts are necessary to be narrated and which are not material and should be omitted. A good lawyer should possess good knowledge of law and must apply his common sense also to decide which necessary facts are to be pleaded in order to achieve the decision of the court in favour of his client. It is pertinent to mention here that according to Order VI, Rule 2, C.P.C. material facts are required to be stated whereas under Order VI, Rule 4 particulars, wherever necessary, are required to be given and there is a distinction between both the above provisions. The specific act of the opposite party which amounts to material fact necessarily be given before stating particulars. In any suit for breach of contract, the plaintiff must state the period and date of delivery of specific or ascertained goods and also his willingness to abide by his part of contract. Thereafter, other relevant particulars including the details of goods, quality and quantity etc. may be given.

In a case of defamation, plaintiff must state that the words or the act have been maliciously published which are defamatory in nature and reflect to the plaintiff. In the plaint, plaintiff must specify the actual words and the mode of publication. These are the material facts which must be pleaded in a suit for defamation.

3. Pleading of material facts, not evidence.—Another important rule is that where certain facts are relied upon, it will suffice to allege the same without making a mention of such facts which form part of the evidence to prove the allegations. Thus, the plaintiff is not required to come out with the

evidence in pleadings, which he will adduce at the trial to prove the facts and allegations.

The provision of Order VI, Rule 2 of the Code of Civil Procedure lays down that -'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, as the case may be, but not the evidence by which they are to be proved.'

The main features which emerge from the above rules are that only material facts should be alleged, the statement of material facts should be in brief and that the evidence by which the allegations are to be sustained should not find place in a pleading.

In a case where time is not the essence of the contract, it is enough to plead that the work was executed within a reasonable time. There is no need of explaining the delay *i.e.* the unfavourable weather or the worker's strike etc. which forms evidence to prove that despite of all these odds, the work was executed within a reasonable time. Such explanation is the evidence to prove that the time taken in execution of the work was reasonable.

In a case where an employee has committed a fraud during the course of his employment, it is sufficient to narrate the fact of committing the fraud but the records which throw light in this behalf are not to be disclosed since these are the documents by which the act of committing fraud will have to be proved. These documents shall be used as evidence.

Where the point in issue is whether X in a business organisation is a partner of Y. It would not be a

good pleading to state that X shared the profits and/or contributed to the losses incurred in the business organisation. It is enough to plead that X was a partner with Y in the same business organisation.

Admission is a form of evidence. It is not necessary to list out a large number of letters which are considered material since they contained admissions.

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

(Order VI, Rule 13, C.P.C.)

Whenever it is material to allege notice to any 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. [Order VI, Rule 11, C.P.C.]

Whenever 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 a 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. (Order VI, Rule 12, C.P.C.). For example, payment and acceptance of rent may be an implied contract of tenancy.

4. Pleadings to be Concise and Precise:

The pleadings should not only be concised but must also be precised. Although the pleadings are required to be in brief but with accuracy and certainty. Pleadings must be clear and definite and should not be sacrificed for the sake of brevity. The construction of pleadings should be such so as to express with a high degree of certainty in order to facilitate the opponent to exactly know the case he is called upon to meet. A general charge of corruption cannot be allowed in a pleading. The corruption must be specifically alleged in the pleading. It follows that exact nature of corruption should be mentioned so that opposite party must reply and submit his defence in relation to that particular allegation of corruption. If precision is lacking in the pleadings the very purpose and objective of pleadings to know the real issue of controversy would be defeated.

In the context that the pleadings should be concised, it is relevant to understand that names of persons and places, if relevant, must be mentioned with clarity and accuracy. The use of pronouns should be avoided and instead "Plaintiff or Defendant" as the case may be should be used otherwise using pronoun "he" may sometimes create ambiguity.

This is a very important rule of pleading that "the material facts should be stated in the pleading in a concise form but with precision and certainty. The pleading shall, when necessary, be divided into paragraphs numbered consecutively. Dates, sums and numbers shall be expressed in figures, as well as in words." [Order VI, Rule 2(1), 2(2) and 2(3), C.P.C.]

The pleadings should be clear and specific, although in a concise form so as to avoid ambiguity and vagueness, in order to opposite party to know the case he is required to meet. The cheating must be pleaded with particularity *i.e.* cheating done in money transaction, cheating done by tampering of documents etc. the exact nature of cheating should be pleaded.

Parties can take alternative pleas meaning thereby that the plaintiff or defendant are entitled to rely upon two or more different sets of facts. It is permissible to prefer alternative and inconsistent pleas but they should be based on facts which are not contradictory or inconsistent.

Amendment of Pleadings.-

Pleadings can be amended at any stage of the proceedings on direction by court. It is an important function of every court to get all the irrelevant matter, defects and inconsistencies in the pleadings removed so as to ensure a fair trial and in the interest of justice without prejudice to any party in the suit. This power is conferred upon the court in order to determine the actual issues in dispute between the parties. If the pleading of a party does not contain all particulars of any material fact, as required under Order VI, Rule 4 of C.P.C., the court can exercise its power to ask for more details. The purpose of this rule is to remove any ambiguity in the pleadings, to eliminate irrelevant matter, to induce parties to arrive at definite issues of controversy and to obviate further

litigation.

The Court in accordance with the provisions of Order VI, Rule 16 of the C.P.C. may pass an order for striking out or amending any pleading if the same is considered objectionable.

Order VI, Rule 16 of the C.P.C. stipulates that :

"The court may, at any stage of the proceedings, order to be struck out or amended any matter in any pleading—

- (a) Which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) Which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) Which is otherwise an abuse of the process of the court?

A party can make request to the court to strike out or amend the unnecessary or objectionable matter in the pleadings of the opposite party.

The provisions of Order VI, Rule 17, C.P.C, in regard to amendment of pleadings, confer a wide discretion upon the court and it is now well settled that the discretion may be liberally exercised where the amendment sought by a party enables to determine the actual controversy between the parties.

Amendment in pleadings can be allowed to be made at appellate stage. Appellate authority has power to allow amendment of the memorandum of appeal. "Proceedings" include memorandum

of appeal also. *Bharathakshemam v Mangolodayam (P.) Ltd.*, 2004 (2) RCR (Civil) 68 (Kerala) (DB).

Thus the salient features which emerge in regard to amendment of pleadings are enunciated below :—

- (a) The amendment of pleadings should normally be permitted if the court is satisfied that such amendment is essential in the interest of proper decision of the dispute between the parties.
- (b) The amendment of pleadings should not be allowed if it fully alters the nature of the case.
- (c) The amendment of the pleadings should not be refused only due to delay on the part of the appellant seeking leave of the court to amend the pleadings if opponent is duly compensated by way of costs etc.
- (d) Amendment of the pleadings should not be permitted when it is irrelevant for determining the real controversy between the parties.
- (e) The amendments of the pleadings should not be allowed if the court discovers that the amendment sought for has not been made in good faith or lack bona fides.

Alternative Pleas

A plaintiff is not debarred from basing his claim alternatively upon several different sets of facts for seeking the relief. The object behind this is to avoid the necessity of another litigation. Normally the plaintiff cannot be granted relief by the court for which there is no base in the pleadings, and on which the defendant has not been afforded any opportunity to reply. However, the alternative claim made by the plaintiff is duly admitted in the written statement by the defendant then there is nothing wrong in giving a decree in plaintiff's favour upon the case so admitted by the defendant himself. *Lakshmikutty Amma v Narayana Pillai*, AIR 1968 Ker 57].

If there is no variation in the cause of action the alternative plea can be allowed.

Alternative Reliefs

A plaintiff can pray for alternative reliefs which may be inconsistent with one another *Deochand v Parvatibai*, AIR 1952 Nag 115]. However, he cannot be permitted to plead contradictory claims **e.g.** claiming title by sub-tenancy and also by adverse possession. *Ajmer Singh v Moli*, 1983 MPWN 336.

It is essential to bear in mind the difference between a rule of pleading and a rule of proof. As an alternative inconsistent pleadings can be pleaded is a well established rule of pleading but the proof of a plea depends upon the provisions of substantive law. *Raychand v*

Manek *Lai*, AIR 1946Pat 206.

Construction of Pleadings in our Country

It goes without saying that in India most of the pleadings are lacking and technicalities as required. It is, this end in view that judicial authorities have expressed the views that the pleadings of the parties should not be too strictly construed. The court, therefore, looks into the substance rather than to go into the technicalities of the pleadings. Pleading in India have to be construed liberally keeping in view the very object of the Pleadings being to ascertain for the guidance of the parties and the court, the material facts in issue.

A pleading has to be read as a whole to ascertain its true meaning. Although, it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or deletion of words. The intention of the party is to be understood from the tenor and terms of his pleadings as a whole. *Udhav Singh v. Madhav Rao Scindia*, AIR 1976 SC 744. The Court should look to the substance and not to the words of the pleading. *Tej Kumar v. Purshottam*, AIR 1981 MP 55. Relief should not be denied merely on a technical construction of the plaint.

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