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ABSTRACT

The Fact of a civil suit is based on its pleadings. The statement of a party is described through pleadings, either by plaintiff or by defendant. Pleadings means the manner through which the case incident develops. All pleadings are the products of claims and counter claims of parties. Pleadings must be clear and must narrate the prima-facie case, where the law peeps. All pleadings lead to the case incident with a claim or with an adverse claim. As such pleadings must be done on material point of a case incident, over which law dictates and gives clear findings. All pleadings should be done with care and diligence. Pleadings are the inner voice of parties in litigation. Pleadings lead to speak the injury and loss added with claim and counter claim sustained by law. Pleadings are the inner voice of a party in litigation. Pleadings are called the peeping of facts in a case matter with cause of action.

Chapter 1

Introduction

"Pleading" is defined as plaint or written statement. According to Mogha : "Pleadings are statements in writing drawn up and filed by each party to a case, stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer".¹

Sub-rule (1) of Rule 2 lays down the fundamental principles of pleadings.

It read as under :

2(1) 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 defense, as the case may be, but not the evidence by which they are to be proved.

The purpose of pleading is to bring the parties to definite issue, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing. For proper adjudication of a disputed question proper pleadings are an essential prerequisite. Proper pleadings is not only a matter of form but are important so that parties are put to their respective positions. If the pleadings are not clear and the parties have no opportunity to meet the case of their opponents there would evidently be miscarriage of justice. To void this a plaintiff who is purposely vague ought to be carefully examined and tied down to definite pleadings. A plaintiff's pleading is his plaint, a statement of claim in which the plaintiff sets out his cause of action with all necessary particulars and a defendant's pleading is his written statement, a defense in which the defendant deals with every material fact alleged by the plaintiff in the plaint and also states any new facts which are in his favor adding such legal objections as he wishes to take to the claim.²

¹ Takowani C.K., *code of civil procedure*, 4th ed. Reprinted, (Locknow: Eastern Book Company, 2008).P.134

² *Ibid*, P.134

Where the defendant, in his written statement, pleads a set-off, the plaintiff may file his written statement thereto. Again, in some cases, the defendant after filing his written statement may file an additional written statement with the leave of the court. The whole object of pleadings is to bring parties to definite issues and to diminish expense and delay and to prevent surprise at the hearings. A party is entitled to know the case of his opponent so that he can meet it. In other words, the sole object of pleadings is to ascertain the real disputes between the parties, to narrow down the area of conflict and to see where the two sides differ, to preclude one party from taking the other by surprise and to prevent miscarriage of justice.

Pleadings cannot be treated as part of evidence. Where evidence on record had been appreciated by Courts below, pleading could not be deemed to have been substituted for evidence. No case was proved by mere filing of plaint and documents but same has to be decided on pleadings by establishing their truthfulness. Pleadings are not evidence by themselves and statement of defendant in written statement cannot be used as evidence, when amounting to admission of plaintiff's pleas, without examination of the concerned party in its support.³

³ Shaukat Mahmood, *Code of Civil Procedure Vol. II*, 7th ed., (Lahore : Newfine printing press 48-Lower Mall, Lahore, 2002). P. 1382

Chapter 2

Meaning of pleadings

2.1 What is pleadings

Pleading is defined as plaint and written statement. A plaintiff's pleading is his plaint, a statement & claim in which the plaintiff sets out his cause of action with all necessary particulars, and a defendant's pleading is his written statement, a defense in which the defendant deals with every material fact alleged by the plaintiff in the plaint and also states any new facts which are in his favor, adding such legal objections as he wishes to take to the claim. The whole object of pleading is to bring parties to definite issues and to diminish and delay and to prevent surprise at the hearing, a party is entitled to know the case of his opponent so that he can meet it. The statements of parties their counsel recorded before the framing of issues for the purpose of clarifying the points in dispute are just as much part of the pleadings as the plaint and the written statement and there can be no doubt about the power of a counsel to give up a plea raised in the plaint in the course of such a statement.

2.2 Strength of pleadings

Every pleading must be signed by the party or by one of the parties or by his pleader. But if the party is unable to sign the pleading, must be verified by the party or by one of the parties pleading or by some other peers on acquainted with the facts of the case.

Sub-rule (1) of Rule 2 lays down the fundamental principles of pleadings. It reads as under :

2 (1) Every pleadings 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 defense, as the case may be, but not the evidence by which they are to be proved.

On analysis, the following general principles emerge :

- (a) Pleading should state facts and not law.

- (b) The facts stated should be material facts.
- (c) Pleadings should not state the evidence, and
- (d) The fact should be stated in a concise form.

A pleading must state only facts and not law on the point. Therefore, the plaintiff is not required to state the section or the statute under which he files the suit. Where in a suit under Fatal Accidents Act, there is no averment to the effect that the suit was being filed for the recovery of damages under the Fatal Accidents Act; such averment was not necessary, because C.P.C does not require the parties to plead the law." The facts which establish the pleas must be stated in each case, but it is not necessary to state the legal effect of the facts state. Pleadings of parties would not control or govern the application of correct law to establish or prove facts." It is for the court itself to find out and examine all please of law that may apply to the facts"⁴. The parties can urge pleas of law at any time before judgment is pronounced, and Court is duty bound to apply law which has to be given effect to, whether is has been relied on by a party or not. Where objection as to defect even if based on a question of law is not raised at proper time when it could have been easily rectified, it cannot be allowed to be raised at a belated stage.

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 in the form exemplified aforesaid, particulars shall be stated in the pleading. In pleadings general allegations, however, strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any court ought to take notice. When an improper conduct is alleged, it must be set out with all particulars. A plaintiff cannot complain if general allegations made by him in the plaint are answered by equally general allegations in the written statement. Where necessary particulars are not mentioned a party can always ask for them. If it does not do so at the proper time, he cannot afterwards be heard to say that he was taken by surprise. ⁵

⁴ *Ibid.* P. 1384

⁵ *Ibid.*, P. 1395

It is however, to be noted that small errors are not sufficient for defeating a claim under this rule provided the plaint contains averments indicating with reasonable definiteness what the nature of the claim is. Plaintiff, filing a suit on the basis of title, must state nature of the deeds on which he relies in deducing his title. Similarly, a party relying upon the fact that the notice of dishonor is not necessary, or that the woman claiming maintenance has lost her right on account of her incontinence, or that the person who has signed the plaint in a suit by a corporate body has authority under the Code, is bound to allege those facts in his pleadings.

Chapter 3

Necessity of pleadings

3.1 Use of pleadings

Pleadings are not evidence by themselves and statement of defendant in written statement cannot be used as evidence, when amounting to admission of plaintiff's pleas, without examination of the concerned party in its support. Pleading cannot be defined to be proper and useful. Every pleadings is a statement supporting the case of a party who may be plaintiff or defendant. The evasion of pleadings passes through pleadings. Pleadings state and guide the statement of a party. Without pleadings the expression of a party does not get its footing. All pleadings are the expression and preparation towards a plaintiff. As such pleadings are necessary steps to prepare and to plead a case and plaintiff. In the pleadings facts on which party to suit relies should be stated in concise form without mentioning law. It is essential that all the material facts should be stated so as not to embarrass the opposite party and so as to put him on his guard and tell him what he has to meet when the case comes on for trial." A party can not be taken by surprise by taking such point of fact and law that had not been incorporated in its pleadings all fact upon which the plaintiff's cause of action or the defendant's defense depends are material, even when they are not necessary to establish the cause of action or defense, but the party pleading them is entitled to prove them at the trial. The intention of a party is a question of fact which must be specially raised in the pleadings.

3.2 Facts in pleadings

Material facts it means all facts upon which the plaintiff's cause of action or the defendant's defense depends, or, in other words, all those facts which must be proved in order to establish the plaintiff's right to relief claimed in the plaintiff or the defendant's defense. There is difference between "material facts" and "material particulars". In case material facts are omitted, a party cannot be permitted to raise contention on that point even if there is material in shape of evidence before the Court.

The position in case of material particulars is different. In case of allegation of fraud, misrepresentation, breach of trust willful default or undue influence, necessary particulars are to be mentioned. Every factual circumstance need not be specifically averred in the plaint. The plaint is there to disclose a cause of action based upon fundamental material facts. A party should not plead facts which have not become material at the time of filing his pleadings. It is a cardinal principle of law that the material facts should be pleaded in offence or defense and if it is not done it deprives the pleadings of most of their value and the defect creates hindrance in administering justice. It is essential for a plaintiff in any proceedings to plead ingredients of facts in pleadings on which he wanted to rely and in proof of which he may produce evidence. Decision of case cannot be given on grounds outside pleadings of parties and it is the case pleaded that has to be found. Evidence is given on such facts, the evidence cannot be looked into and a party cannot be permitted to build up a case which such party failed to set up in its pleadings. Even an argument involving a question of fact which is not pleaded in plaint, cannot be allowed to be raised at argument stage. It is not open to a party to prove in proceedings, a case which was not pleaded by such party at all in his pleadings. A party cannot be allowed to take a stand at variance with his pleadings. But if the parties are conscious about the point of variance and even issues in that behalf are framed by court. Mere non-mention of such ground with clarity in pleadings normally cannot be made basis for rejecting the claim.

All material facts must appear in the pleadings and the necessary particulars must be there so as to enable the opposite party to know the case he is required to meet and to put him on his guard. The rule is not of mere technicality and, therefore, if a party omits to state material facts, it would mean that the plea has not been raised at all and the court will not allow the party to lead evidence of that fact at the trial, unless the court gives that party leave to amend his pleadings. The reason is that non-mention of material facts amounts to non-pleading and, therefore, no cause of action arises in favor of such party. Particulars are to be stated depends upon the facts of each case, but it is absolutely essential that the pleading, not to be embarrassing to the defendant, should state those facts which will put his opponents on their guard and tell them what they have to meet when the case comes up for trial.

Material facts are primary and basic facts which must be pleaded by the party in support of the case set up by it. Since the object and purpose is to enable the opposite party to know the case it has to meet, in absence of pleading, a party cannot be allowed to lead evidence. Failure to state material facts, hence, will entail dismissal of the suit. Particulars, on the other hand, are the details of the case. They amplify, refine and embellish material facts, They give the finishing touch to the basic contours of a picture already drawn so as to make it full, more detailed and more informative.⁶

⁶ Takwani C.K, *Ibid.* P. 136

Chapter 4

Formation of Pleadings

4.1 Concise statements in Pleadings

The words in a concise form are definitely suggestive of the fact that brevity should be adhered to while drafting pleadings. Of course brevity should not be at the cost of excluding necessary facts, but it does not mean niggling in the pleadings. It care is taken in syntactic process, pleadings can be saved from tautology. Every pleading should be divided into paragraph and sub-paragraphs. Each allegation should be contained in a separate paragraph. Dates, totals and numbers must be mentioned in figures as well as in words. The fact must be pleaded with certainty. In other words, they should be definitely stated as facts, and should not be left to be inferred from vague or ambiguous expressions. All material facts must be stated in a summary form, as briefly as the nature of the case requires. Immaterial averments and unnecessary details must be omitted and material allegations and necessary particulars must be included. The object of pleading is to bring the parties to a trial by concentrating their attention on the matter in dispute, so as to narrow the controversy to precise issues and to give notice to the parties of the nature of testimony required on either side in support of their respective cases. A vague or general plea can never serve this purpose. Rule 4 has been evolved with a view to narrow the issue and protect the party charged with improper conduct from being taken by surprise. Every pleadings shall contain only a statement in a concise form of the material facts on which the pleading relies for his claim or defense, as 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. The pleading is to bring the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing. For proper adjudication of a disputed question proper pleading are an essential prerequisite proper pleadings is not only a matter of form but are important so that parties are put to their respective positions.

If the pleadings are not clear and the parties have no opportunity to meet the case of their opponents there would evidently be miscarriage of justice. To void this a plaintiff who is purposely vague ought to be carefully examined and tied down to definite pleadings.

4.2 Inconsistent pleadings

Inconsistent facts can be pleaded and alternative relief can be claimed under the rule. But a party can not plead such inconsistent facts as can not co-exist. The inconsistent facts may raise two alternate cases, but they should not raise inconsistent cases. An alternative case should be distinguished from an inconsistent case. No two facts can be said to be inconsistent with each other if both could have happened. The test of inconsistency between two facts would be that a plaintiff which contains both the facts could not be verified as true by a plaintiff. The plaintiff alleges a document to be a forgery and at the same time states that the execution by him of the document is the result of undue influence, the pleas are inconsistent with each other and a plaintiff cannot verify both the statements of fact as true. If inconsistent pleas will lead to the prejudice and embarrassment of the trial they cannot be allowed, and the court can, where it necessary, require the plaintiff to remove the inconsistency by giving further and better particulars or by setting out his pleas in the alternative every pleading should contain only a statement in a concise form of the material facts on which the party relies for his claim or defense as the case may be. Pleading must be definite, precise and concise. They must be stated precisely and coherently and as briefly as is consistent with clearness.

Alternative conveys a choice between two things. A party to a litigation may include in his pleadings two or more sets of facts and claim relief in the alternative. Inconsistent, on the other hand means mutually repugnant, contradictory, irreconcilable or destructive. One is contrary to the other. Both, therefore cannot stand. Acceptance or establishment of one necessarily implies abrogation or abandonment of the other. The underlying object of allowing alternative pleas and permitting alternative relief's to be claimed in one litigation is to obviate the necessity of another litigation and to decide the entire controversy in the litigation only. A suit for possession of property is maintainable on the basis of title or in the alternative on the basis of lease.

A land lord can file a suit for eviction of his tenant on the ground of personal requirement or in the alternative on the ground of non-payment of rent.

A prayer for specific performance of an agreement or in the alternative a prayer for damages or compensation can be made. A plaintiff may rely on several different rights alternatively although they may be inconsistent so also a defendant may raise by his statement of defense without leave of the court as many distinct and separate inconsistent dynes as he may think proper. It is open to the parties to raise even mutually inconsistent please and if relief could be founded on the alternative plea it could be granted. Thus a claim of ownership or in the alternative a right of casement or a plea of forgery or in the alternative a plea of execution under undue influence or fraud or a plea of grant perpetual tenancy or in the alternative a plea of adverse possession can be taken. All the inconsistent pleas sought to be raised by a party must be maintainable at law.⁷

⁷ *Ibid.* P.141

Chapter 5

Construction of pleadings

5.1 Amendment of pleadings

The pleadings filed by the parties are defective, the trial Court should insist on their being improved before it embarks on the case. Where deviation from rules of pleadings had caused prejudice to the other side in any manner or form, no effect could be given to the prejudicial consequence that would follow. A plaint of a suit or eviction application of a rent case, cannot be rejected because of defect in signing and verification of plaint or eviction application. But the defect in pleading should not prevent the relevant authority or Court from doing complete justice, nor should it be instrumental in the perpetuation of injustice. Where a point is not specially stated in the pleadings but an issue is allowed to be raised on it, the Court would not dismiss it for the initial omission. Similarly a suit will not be dismissed in appeal merely on the ground of defects in the pleadings where it is evident that there has been no misunderstanding in the minds of the parties as to what the issues really were. The pleading of the parties cannot take the place of evidence. Averments made in pleadings carry no weight until author of such pleadings personally turns up to support them offering himself for cross examination by adversary. The rules of procedure are intended as aids for a fair trial and for reaching a just decision. Their function is to facilitate justice and further its ends and not to obstruct it. A procedural law is not a tyrant but a servant, not an obstruction but an aid to justice, not a mistress but a handmaid to the administration of justice. Provisions relating to pleadings in civil cases are meant to give to each side initiation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent deviations from the course which litigation on particular causes of action must take. The rules of pleadings are altogether ignored. The liberal construction must be confined within reasonable limits. therefore, where the plaintiff is a practicing lawyer and is also represented by a lawyer, or where a technical defense is set up against a just claim, or where in an election petition charges of corrupt practice have been leveled against the successful candidate, the pleadings must be strictly construed.

As already stated, materials has facts and necessary particulars must be stated in the pleadings and the decision cannot be based on the grounds outside the pleadings. But many a time the party may find it necessary to amend his pleadings before or during the trail of the case. "Fresh information has come to hand; interrogatories have been fully answered by his opponent ; documents whose existence was unknown to him have been disclosed which necessitates reshaping his claim or defense. Or his opponent may have raised some well-founded objections to his pleadings, in which case it will be advisable for him to amend at once his pleadings before it is too late.

Rule 17 provides for amendment of pleadings. It reads as under :

Anowar Hossain Chowdhury V Bangladesh case court opined that "Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.⁸

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion *Ramandhan V Veerapp* that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The courts should try the merits of the cases that come before them and should consequently 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. Ultimately, courts exist for the purpose of doing justice between the parties and not for punishing them, and they are empowered to grant amendments of pleadings in the larger interest of doing full and complete justice to the parties. Provisions for the amendment of pleadings are intended for promoting the ends of justice and not for defeating them⁹.

⁸ 41(1989) DLR (AD) 165

⁹ 26 (1937) CWN 84

The rule confers a very wide discretion on courts in the matter of amendment of pleadings. As a general rule, leave to amend will be granted so as to enable the real question in issue between the parties to be raised in pleadings, where the amendment will occasion no injury to the opposite party and can be sufficiently compensated for by costs or other terms to be imposed by the order. The main points to be considered before a party is allowed to amend his pleading are : firstly, whether the amendment is necessary for the determination of the real question in controversy; and secondly, can the amendment be allowed without injustice to the other side.

The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment should not be allowed. On the other hand, if the amendment is necessary to decide the "real controversy" between the parties, the amendment should be allowed even though the court may think that the party seeking the amendment will not be able to prove the amended plea. This is the basic test which governs the courts/ unsheltered powers of amendment of pleadings.

The second condition is also equally important, according to which no amendment will be allowed which will cause injustice to the opposite party. It is settled law that the amendment can be allowed if it can be made without injustice to the other side. But it is also a cardinal rule that there is no injustice if the other side can be compensated by costs. Thus, the court may allow amendment for the purpose of granting consequential relief, or granting relief on the basis of different approaches to the same facts, or to avoid multiplicity of proceedings, or to take notice of subsequent events, or where the amendment is of a formal nature, or to clarify the pleading, or to allow misdescription of parties to be corrected, etc.

Amendment of pleadings must be liberally construed with a view to promote the ends of justice and not to defeat them. The purpose and object of rules of pleadings is to decide the real controversy between the parties and not to punish them for their mistakes, negligence or shortcomings. The exercise of discretionary power must be governed by judicial considerations and the wider the discretion, the greater the care and circumspection.

Ordinarily, the following principles should be borne in mind in dealing with applications for amendment of pleadings.

- (a) All amendments should be allowed which are necessary for determination of the real controversies in the suit.
- (b) The proposed amendment should not alter and be a substitute for the cause of action on the basis of which the original lies was raised.
- (c) Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts would not be allowed to be incorporated by means of amendment.
- (d) Proposed amendments should not cause prejudice to the other side which cannot be compensated by means of costs.
- (e) Amendment of a claim or relief barred by time should not be allowed.
- (f) No amendment should be allowed which amounts to or results in defeating a legal right to the opposite party on account of lapse of time.
- (g) No party should suffer on account of technicalities of law and the amendment should be allowed to minimize the litigation between the parties.
- (h) The delay in filing petitions for amendments of pleadings should be properly compensated for by costs.
- (i) Error or mistake which if not fraudulent should not be made a ground for rejecting the application for amendments of pleadings.
- (j) The above principles are illustrative and not exhaustive.

Leave to amend may be granted at any stage of the proceedings. Such amendment applications are not governed by any law of limitation.

Leave to amend may be granted before, or at, or after the trial, or in First Appeal, or in Second Appeal or in Revision, or in the Supreme court or even in execution proceedings provided the decree is legal, lawful and enforceable, not otherwise. Proviso to Rule 17, as inserted by the Amendment Act of 2002, now restricts the power of the court and declares that the court should not allow such amendment after the commencement of the trial unless it comes to the conclusion that in spite of due diligence, the matter could not have been raised by the party before the commencement of the trial.

The plaintiff in a suit for accounts asked for full and complete accounts but the plaintiff in the particulars supplied under this rule, asked for accounts only upto a particular date ; it was held that the plaintiff was not entitled to claim accounting for a further period till the dealings between the parties continued, unless he asked for amendment of his further particulars.

5.2 Effect of amendment of pleadings

Amendment would not change nature or character of suit, the relief sought to be incorporated in plaint by way of amendment could be consistently maintained on facts and circumstances already stated in plaint and was thus, based on same cause of action, which fact by itself would be sufficient to out weigh consideration of limitation. Where plaintiff sought amendment in the plaint, after expiry of four years in terms that they had been deprived of the possession during the tendency of the suit. *Bharan V Kana*. It was held that amendment in plaint could not be disallowed on the basis of additional relief and merely because that was sought after the expiry of period of 4 years. Where an amendment in pleadings is allowed it takes effect from the date when the suit was instituted.¹⁰

¹⁰ 26 CWN 359

A plaint can be allowed to be amended under this rule although at the time of the amendment the suit, if instituted then, would have been barred by limitation. Therefore where no new cause of action was sought to be set up by plaintiff through amendment by him in plaint, amendment in plaint, could be allowed. Suit was filed in the name of a firm though it should have been instituted in the name of the plaintiff, the latter was allowed to amend the plaint after the period of limitation for the institution of the suit had expired. But where a necessary party is added the amendment cannot related back to the date of the filing of the suit. Amendment is allowed, such amendment relates back to the date of the suit as originally filed. The court must look to the pleadings as they stand after the amendment and leave out of consideration unimpeded ones. The question of limitation must be decided with reference to the date of filing of the plaint or written statement and not with reference to the date of amendment.

If a party, who has obtained an order for leave to amend, does not amend accordingly within the time specified for that purpose in the order or if no time is specified then, within 14 days from the date of the order, he shall not be permitted to amend after expiry of the specified time or of 14 days unless the time is extended by the court. It does not, however, result in dismissal of the suit. Again, the court has discretion to extend the time even after the expiry of the period originally fixed. In an appropriate case, the court may allow the amendment to be carried out by the party in spite of his default on payment of further costs. The reason is simple. "We cannot be oblivious of facts of life, namely, the parties in courts are mostly ignorant and illiterate- unversed in law. Sometimes their counsel and also inexperienced and not properly equipped." *Moklesur Rahman V Bangladesh* and the court should endeavor to ascertain the truth to do justice to the parties.¹¹

¹¹ 26(1974) DLR (SC) 44

5.3 Signing and Verification of pleadings

Every pleadings should be signed by the party and its counsel. The object of requiring every pleading to be signed by the party is to prevent, as far as possible, disputes as to whether a suit was instituted with the plaintiff's knowledge and authority and the nothing is done on behalf of that party is to prevent, as far as possible, disputes as to whether a suit was instituted with the plaintiff's knowledge and authority, and that nothing is done on behalf of that party in a manner prejudicial to his interests. The pleadings are to be signed by the parties but where a party is a Government officer contesting the suit in his official capacity and he does not sign the pleadings. defect is a mere irregularity which may be cured subsequently even at appellate stage. It is further not necessary that the officer, when he signs the pleadings must also affix the seal of his office to the pleadings. The procedure for signing the pleadings is the same as that for signing vakalats and affidavits. Party is unable to sign the pleading it should be signed by any person duly authorized by such party to sign or to sue or defend on his behalf. This concession is allowed only to that party who cannot sign the plaint etc. because of his bona fide absence or other good cause such as an oversight or inadvertence. Once it is established that the non-signing of the pleadings is based on mala fide, bad faith or for the matter of that the signature or thumb-impression of a party is forged on the pleadings.

Every pleadings shall be verified 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 case. The person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true. 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. Pleadings may be verified by an authorized agent of the party but he is required to submit in Court power-of attorney which was to be examined by Chief Ministerial Officer of Court and entry of such examination is to be made at foot of proceedings.

Non-production of power of attorney with plaint and failure to verify such power of attorney by Ministerial Officer of court are only technical and formal defects which can be cured by production of requisite document. Moreover a recognized agent has no right to do so in all cases and it is open to the opposite party to insist on the party himself verifying the pleading in important cases. Where the plaint contains serious allegations of fraud, falsification of account, culpable negligence, etc. against the defendant, and the verification is sought to be made by an agent under a power of attorney by merely putting on record the power of attorney, it is wholly insufficient for the purpose, such agent would be incompetent to verify the plaint.

Every pleading must be signed by the party or by one of the parties or by his pleader. But if the party is unable to sign the pleading, it can be signed by any person authorised by him. Similarly, every pleading must be verified by the party or by one of the parties pleading or by some other person acquainted with the facts of the case. The person verifying the pleading must specify what paragraphs he verifies upon his knowledge and what paragraphs he verifies upon information received by him and believed by him to be true. The verification must be signed on an affidavit by the person verifying and must contain the date on which and the place at which it was signed. The person verifying the pleading should also furnish an affidavit in support of his pleadings. The object underlying this provision is to fix upon the party verifying or on whose behalf verification is made the responsibility for the statement that it contains, and to prevent as far as possible disputes as to whether the suit was instituted or defended with the knowledge of authority of the party, who has signed the verification or on whose behalf it has been signed.

A defect in the matter of signing and verification of pleadings is merely an irregularity and can be corrected at a later stage of the suit with the leave of the court and a suit cannot be dismissed nor an order be passed against a party on the ground of defect or irregularity in signing or verification of plaint or written statement. Similarly, if the affidavit filed by the party is defective, a court, instead of rejecting it, may give an opportunity to the party to file a proper affidavit.

Chapter 6

Object of pleadings

6.1 Principles followed in pleadings

Construction of pleadings would arise only when there is some ambiguity in the language employed therein, or when pleadings set out to lay down a legal proposition which would be more a matter of argument than of statement in the pleadings. In such a case it can be said that the pleadings should not be construed or interpreted strictly according to their letter. But it is clearly not a matter of construction of the pleadings when certain facts are stated in clear and unambiguous language in the plaint or the written statement, facts which do not need any elaborate construction or interpretation, but emerge quite plainly and easily from the words used, and a party cannot be allowed to change the very nature of his case or resale from the case set up by him under the guise of liberal construction of pleadings. When the pleadings are unambiguous no oral evidence is admissible for the purpose of showing the intention which prompted or underlay that document. The averments in the plaint are made on solemn affirmation and form part of the record of court and a party is perfectly entitled to avail of them as best as he can.

The object of pleading is to bring the parties to a trial by concentrating their attention on the matter in dispute, so as to narrow the controversy to precise issues and to give notice to the parties of the nature of testimony required on either side in support of their respective cases. A vague or general plea can never serve this purpose. Rule 4 has been evolved with a view to narrow the issue and protect the party charged with improper conduct from being taken by surprise.

- (a) Whenever giving of notice, to any person is necessary or a condition precedent, pleadings should only state regarding filing of such notice, without setting out the form or precise terms of such notice or the circumstances from which it is to be inferred, unless they are material.

- (b) Implied contracts or relations between persons may be alleged as a fact, and the series of letters, conversations and the circumstances from which they are to be inferred should be pleaded generally.
- (c) Facts which the law presumes in favor of a party or as to which the burden of proof lies upon the other side need not be pleaded.
- (d) Forms in Appendix a of the code should be used wherever they are applicable. Where they are not applicable, forms of like nature should be used.
- (e) Every pleading should be divided into paragraphs, numbered consecutively, Each allegation or averment should be stated in a separate paragraph.
- (f) Dates, totals and numbers should be written in figures as well as in words.
- (g) The performance of a condition precedent need not be pleaded since it is implied in the pleadings, Non-performance of a condition precedent, however, must be specifically and expressly pleaded.
- (h) Generally departure from pleading is not permissible, and except by way of amendment, no party can raise any ground of claim or contain any allegation of fact inconsistent with his previous pleadings.
- (i) A bare denial of a contract by the opposite party will be construct only as a denial of factum of a contract and not the legality, validity or enforceability of such contract.
- (j) Documents need not be set out at length in the pleadings unless the words therein are material.
- (k) Wherever malice, fraudulent intention, knowledge or other condition of the mind of a person is material, it may be alleged in the pleading only as a fact without setting out the circumstance from which it is to be inferred. Such circumstances really constitute evidence in proof of material facts.

6.2 Discretion of a party in amending pleadings

It is the duty of the Court to see that parties plead their cases so plainly, fully and clearly that each side knows the nature of the case which has to be met. If the pleadings are not

definite, the proper course would be, not to take the case off the file, but to order particulars to be given or to direct amendment of the plaint, or to provide for a better statement of the claim being put in. Where suit property was identified in the scheduled by boundaries and name given to different fields, in absence of any corresponding Khasra numbers given to such land in the settlement operation, no effective, executable and enforceable decree could be passed in case plaintiffs succeeded on merits. Appellate Court, thus rightly asked for a further and better statement from plaintiffs which necessitated amendment of plaint so that property in question, could be identified by khasra numbers so as to avoid any difficulty at the time of execution of decree, if passed. But where a matter is casually stated in the plaint and the claim does not turn upon it nor is the defendant called upon to meet the case as regards such matter, an application for further and better particulars may well be refused. If a party having a right to apply for particulars does not do so in the trial Court, he cannot complain of want of particulars in the appellate Court, for his failure to apply operates as an estoppel. There will be no necessity for amendment by giving particulars when the Court has already come to a definite finding on a point.

A party is always at liberty to amend the pleadings on necessity. No amendment can be done beyond on the law. All amendments must be done with a focus to the subject matter the case incident i.e. it should reflect the merit of the case and the conflict of the parties. Unnecessary amendment of the pleadings does not add to the case matter ; it should always be done either on facts or on material points lengthy amendments kills the sanctity of the record. It engulfs the matter and also creates an unpleasant atmosphere which can not be covered by law.

As such all amendments must be done within the boundary of legal frameworks. Amendment is possible at any stage of trial or even in appeal the same can be done. if a party files a written statement either wholly or partially inconsistent with a previous written statement without obtaining the permission of the Court, the Court cannot but ignore such a written statement. Amendment should not be refused if it occasioned no harm to the opposite party except such as can be sufficiently compensated by costs, the party asking for amendment had acted in good faith, the amendment had not

taken away from the other side a legal right which had accrued to him by lapse of time and the amendment did not change the character of the suit. These are the widely accepted guiding principles for exercise of discretionary power under Order VI, Rule 16. Therefore increase in court-fee and change of jurisdiction would not be a ground for refusing amendment in plaint. But if, owing to the way in which the pleadings has been framed, the other party has been put into such a position that an injury would be done to him by an amendment, the court will not grant leave for it. The amendment must not so injure the other party that he cannot be compensated in costs.

Chapter 7

Conclusion

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 defense, as 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. The plea of maintainability of the suit is essentially a legal plea. If the suit on the face of it is not maintainable, the fact that no specific pleas were taken or no precise issues were framed is of little consequence. Where the High Court was considering competing claims of two parties under two separate agreements of sale and was upholding the truth of the execution of the two agreements, no error was committed by the Court in holding that one of the contracts was contingent even if there was no pleading to the effect.¹² Admissions made in the court regarding true state of affairs should not disentitle the opposite party from succeeding merely because of the absence of a plea. Pleadings is the grounds to prepare a case pleading means a bundle of facts prepared to file a case. It is the statement of a party to developed its merit in the case all pleadings are facts let to plaintiff. It is the grounds of preparation for plaintiff all pleadings are the inner statement of a man in litigation.

Pleadings always attract the case matter. The inner thoughts of a party attracting the case incident are the subject matter of pleadings. Statement of a party cast either for plaintiff or for defendant and the same attract the case incident as such the case incident is the subject matter of the pleadings. If bundle of facts create cause of action, and if they reflect the happening and the incident needs be described in the plaintiffs or defendants case, the same should be done properly.

¹² Sarkar, S.C *Code of Civil Procedure*, 5th ed., (Calcutta : East India Press Roy Street Calcutta⁶, 1973). P. 356

A party must succeed or fail on the strength or weakness of his case. Where a question of fact was not specifically raised in the pleadings, evidence on such point cannot be looked into and the party cannot be permitted to build up a case not set up in the pleadings. Where the defendant does not in his written statement specifically deny the title of the plaintiff alleged in the plaint, he cannot subsequently lead evidence to disprove the title. If he does so, the evidence should be ignored.

PLEADINGS IN A CIVIL SUIT

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Session - Spring 2006

**This thesis is Submitted in partial fulfillment
for the degree of
LLB (Honours)
Stamford University Bangladesh 2010**

SUPERVISED BY

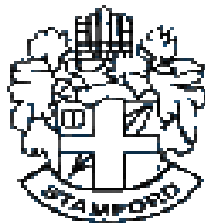
Khundker Emdadul Hassan

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April,2010



STAMFORD UNIVERSITY, BANGLADESH

To,
The Chairman
Thesis Defense Committee
Department of Law
Stamford University Bangladesh.

Sir,

I have the honour to state that, Farhana Islam of the Siddeswari Campus bearing I.D.- LL.B. 03005784 has completed her thesis. And she is ready to face the viva.

As such, a date for her viva be kindly fixed by your honour.

Sincerely Yours

Date :

Khundker Emdadul Hassan

DECLARATION

I hereby do solemnly declare that the work presented in this thesis has been carried out by me and has not been previously submitted to any other institution.

The work I have presented does not breach any copyright.

I further undertake to indemnify the University against any loss or damage arising from breach of the foregoing obligations

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DEDICATION

This thesis is hereby dedicated to my beloved father and mother.

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First of all, I wish to acknowledge the immeasurable grace and propound kindness of the Almighty Allah. I express my gratitude to my honorable thesis supervisor Khundaker Emdadul Hassan Assistant Professor, Department of Law, Stamford University Bangladesh for giving me the opportunity to complete my thesis report. As without his proper guidance it would have been quite impossible for me to complete the thesis.

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Finally I express thanks to my friends and well-wishers.

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ABBREVIATIONS

1. A.D : Appellate Division.
2. Ch : Chapter.
3. C.P.C : Code of Civil Procedure.
4. Deft : Defendant.
5. D.L.R. : Dhaka Law Reports.
6. Ed. : Edition.
7. Plff : Plaintiff.
8. P : Page.
9. Sec. : Section.
10. Vol. : Volume.
11. CWN : Calcutta Weekly News
12. S.C : Supreme Court.
13. H.C.D : High Court Division.

FOREWORD

Farhana Islam has worked with the thesis under my Supervision for more than 4 months. She submitted the paper after due works done with care and diligence. It took her extra time in order to submit the thesis properly. After going through the thesis paper I hopefully can say that she could express her ideas properly under my guidance consulting the books mentioned in the book reference. I hope that the thesis paper will duly be accepted.

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TABLE OF CASES

1. *Anower Hossain Chowdhury V Bangladesh*, 41(1989) DLR (AD) 165. 13
2. *Ramanadhan V Veerappa*, 26 (1937) CWN 84. 13
3. *Bharan V Kanak* , 26 CWN 359. 16
4. *Moklesur Rahman V Bangladesh*, 26(1974) DLR (SC) 44 17

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1. Sarkar S.C, *Code of Civil Procedure*, 5th ed., (Calcutta : East India Press Roy Street Calcutta⁶, 1973).
2. Shaukat Mahmood, *Code of Civil Procedure Vol. II*, 7th ed., (Lahore : Newfine printing press 48- Lower Mall, Lahore, 2002).
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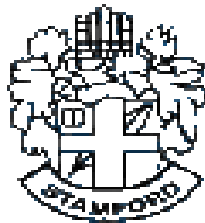
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