Subject Name: Civil Procedure Code
Topic Name: Meaning and Particulars of Written Statement

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Introduction

Although the term "written statement" lacks a formal definition in the Code, it typically refers to a specific response provided by the defendant to the plaintiff's filed plaint. In essence, a written statement embodies the defendant's plea, addressing each pertinent fact asserted by the plaintiff in the plaint.

Additionally, it may introduce new facts favourable to the defendant's case or raise legal objections against the plaintiff's claims.

A written statement can be submitted by either the defendant or their authorised representative. In cases involving multiple defendants, if they file a joint written statement, it must bear the signatures of all parties involved.

However, it suffices for the statement to be verified by one of them who possesses knowledge of the case's facts and is capable of submitting an affidavit. Nonetheless, it's important to note that a written statement filed by one defendant does not legally bind the other defendants.

Within thirty days of receiving the summons, a defendant is expected to submit a written statement outlining their defence. However, this duration can be extended up to ninety days if necessary.

Outer Limit for Filing Written Statement

The proviso to Rule I, introduced by the Amendment Act of 2002, sets a maximum limit of ninety days for filing a written statement from the date the defendant is served with the summons.

In the case of ***Kailash v. Nanhku*****,** the Supreme Court deliberated on whether the ninety-day time limit stipulated by the proviso to Rule I of Order 8 for filing a written statement by the defendant should be considered mandatory or merely advisory.

After examining the original provisions of the Code, the recommendations of the Law Commission, and Parliament's concern for expeditious case resolution while upholding fairness and natural justice principles inherent in procedural laws, the Court determined that the provision was permissive rather than obligatory.

The Court emphasised that while the judicial process could be expedited, fairness, an essential component of justice, must not be compromised. It asserted that procedural rules serve the purpose of advancing justice and ensuring that parties can participate effectively.

Unless the statute explicitly mandates otherwise, provisions of the Civil Procedure Code (CPC) or any procedural legislation should not be interpreted in a manner that restricts the court's ability to address extraordinary circumstances in the pursuit of justice.

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The Court concluded that even if a legal provision is phrased in negative terms suggesting a mandatory nature, exceptions may exist. Courts, in interpreting such provisions, should consider the broader context in which they were enacted and may construe them as advisory despite their negative formulation.

In the landmark judgement of ***Salem Advocate Bar Assn. (2) v. Union of India*****,** the Supreme Court provided insightful interpretation by harmonising Rules 1, 9, and 10 of Order 8. The Court emphasised the application of the doctrine of harmonious construction to understand these provisions.

Rule 10 of Order 8 stipulates that if a party fails to submit a written statement within the specified time frame, the Court has the authority to either render judgement against them or issue any other appropriate order concerning the suit. Despite the seemingly mandatory language ("shall"), the

Court retains discretion regarding pronouncing judgement if the written statement is not filed, allowing for flexibility in handling such situations.

In reconciling Rules 1 and 10 of Order 8, it was underscored that the Court, under Rule 10, possesses the discretion to permit the defendant to submit a written statement even after the ninety-day period prescribed in Rule 1 has elapsed. Rule 10 does not impose any limitation on granting further time beyond the initial ninety days. Hence, it was concluded that the provision in Rule 1 setting the upper limit of ninety days for filing a written statement is directive rather than mandatory.

However, the Court cautioned against routine extensions of time. While acknowledging the discretion of the Court to extend the filing deadline, it stressed that such discretion should be exercised judiciously, particularly considering that the legislature has established the ninety-day limit. Extensions should only be granted in exceptionally challenging circumstances, ensuring that the spirit of the ninety-day timeframe prescribed by Order 8 Rule 1 is not undermined.

Special Rules of Defence

Grounds for Raising New Facts in Defence

New facts, including grounds such as the suit's lack of maintainability or the transaction being void or voidable in law, must be raised as part of the defence.

These encompass all grounds that, if not raised, would surprise the plaintiff or introduce factual issues not mentioned in the plaint, such as fraud, limitation, release, payment, performance, or facts indicating illegality. The purpose of this rule is to ensure transparency in legal proceedings, enabling each party to inform the court of the issues they intend to present.

Failure to raise a pertinent plea may result in the court handling the matter in one of two ways. It may decide that the issue cannot be considered since it was not raised and thus cannot be relied upon, or it may grant permission to amend the pleadings to include the issue, thereby protecting the opposing party's interests, even if it means delaying the proceedings.

Importantly, the rule does not outrightly exclude relevant matters from the court's consideration solely because they were not explicitly pleaded; instead, it places the party at the court's discretion, which will act in a manner it deems just.

If a plea is not raised, it might lead the plaintiff to assume that the defendant has waived their right to rely on that point. Consequently, the defendant cannot automatically invoke any defence ground not raised in their written statement. Determining whether a particular plea has been raised in the written statement hinges on interpreting the content of the statement.

However, if a plea or defence ground arises directly from admitted facts or is apparent from the plaint itself, there is no question of prejudice or surprise to the plaintiff. In such cases, the defendant is not obliged to raise the plea initially but can do so later in the suit, particularly if it involves a pure question of law like a plea of limitation.

Similarly, if the defendant presents all the factual basis of their defence without explicitly stating its legal implications, the defence cannot be dismissed on the grounds that the legal effect was not articulated.

Specific Denial Requirement in Written Statement

The defendant's denial in the written statement must be specific. Merely offering a general denial of the plaintiff's allegations is insufficient. Instead, the defendant must address each factual assertion they do not admit to, providing specific responses for each, except in cases concerning damages.



Clarity and Specificity in Denials

The denial should not be vague or evasive. When a defendant intends to refute any factual allegation in the plaint, they must do so with clarity, specificity, and explicitness, avoiding evasive or general denials.

For instance, if the plaintiff alleges that the defendant received a certain sum of money, it is insufficient for the defendant to simply deny receiving that exact amount. Instead, they must deny receiving the specified sum or any portion thereof, or alternatively, they should specify the precise amount they acknowledge receiving.

Consequences of Failure to Deny Factual Allegations

Each factual allegation in the plaint, if not specifically denied or denied by necessary implication, or declared as not admitted in the defendant's pleadings, shall be deemed admitted, except in the case of a person under a legal disability.

However, the court retains the authority to demand proof of any such fact despite its admission. In cases where the defendant has not submitted a written statement, the court has the discretion to either render judgement based on the facts stated in the plaint (excluding admissions against a person under a legal disability), or request proof of any such fact. Upon pronouncing judgement, the court shall issue a decree in accordance with it.

Separate Presentation of Distinct Grounds of Defence

If the defendant relies on multiple distinct grounds of defence, set-off, or counterclaim based on separate and distinct facts, they must be presented separately and distinctly.

Introduction of New Grounds of Defence

The defendant or plaintiff, as applicable, may introduce any new ground of defence, arising after the commencement of the suit or the submission of a written statement asserting a set-off or counterclaim, in their respective written statements. In such cases, the court is authorised to consider subsequent events.

Limitation on Submission of Further Pleadings

No further pleadings, except those pertaining to defence against a set-off or counterclaim, can be submitted after the defendant's written statement. However, the court retains the discretion to permit any party to file additional pleadings under terms it deems appropriate.

Consequences of Defendant's Failure to Submit Written Statement

If the defendant neglects to submit their written statement within the allotted or court-specified time frame, the court will either render judgement against them or issue any other appropriate order concerning the suit, and a decree will be formulated based on this judgement.

However, the court cannot hastily render judgement solely because the defendant has not filed a written statement refuting the plaintiff's claims in the plaint.

In the case of ***Modula India v. Kamakshya Singh Deo***, the Supreme Court elucidated on the scope and arrangement of Rules 1, 5, and 10 of Order 8. The Court emphasised that Rule 1 merely mandates the defendant to present a written statement within the specified time, while Rule

5(2) allows the court, in the absence of a pleading from the defendant, to consider pronouncing judgement based on the facts outlined in the plaint, albeit with the discretion to demand proof of any such fact.

Similarly, under Rule 10, if the defendant fails to submit a written statement within the stipulated time, the court is empowered to either render judgement against them or make any other appropriate order regarding the suit.

Despite the language of Rule 10 indicating that the court "shall" pronounce judgement, it remains apparent that the court retains the discretion to either pronounce judgement based on the plaintiff's assertions in the plaint or make another suitable order. Thus, these rules are permissive in nature, granting the court the flexibility to decide the course of action based on the circumstances of each case.

Furthermore, the Supreme Court, in ***Balraj Taneja v. Sunil Madan*****,** provided crucial insights on this matter. It highlighted that the court should not blindly accept a defendant's admission in their written statement, nor should it rush to judgement solely because the defendant has not filed a written statement disputing the plaintiff's assertions in the plaint.

Especially in cases where the defendant has not submitted a written statement, the court should exercise caution before proceeding under Order 8 Rule 10 of the CPC. Before pronouncing judgement against the defendant, the court must ensure that even if the facts stated in the plaint are considered admitted, a judgement could feasibly be rendered in favour of the plaintiff without requiring further proof.

This determination rests on the court's satisfaction that there are no contested facts needing proof due to deemed admission. However, if the plaint itself indicates disputed factual issues, the court should refrain from passing judgement without first requiring the plaintiff to substantiate these facts.

In such cases, the court may, at its discretion, demand proof of any such fact under Rule 5(2) or make any other appropriate order under Rule 10 of Order 8.