

Code of Civil Procedure 1908

Section 158 - REFERENCE TO CODE OF CIVIL PROCEDURE AND OTHER REPEALED ENACTMENTS In every enactment or notification passed or issued

a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and (b) if such persons brought separate suits, any common question of law or fact would arise. 2. Power of court to order separate trials Where it appears to the court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient. 3. Who may be joined as defendants All persons may be joined in one suit as defendants where-- (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and (b) if separate suits were brought against such persons, any common question of law or fact would arise. 3A. Power to order separate trials where joinder of defendants may embarrass or delay trial Where it appears to the court that any joinder of defendants may embarrass or delay the trial of the suit, the court may order separate trials or makes such other order as may be expedient in the interests of justice. 4. Court may give judgment for or against one or more of joint parties Judgment may be given without any amendment-- (a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to; (b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities. 5. Defendant need not be interested in all the relief claimed It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him. 6. Joinder of parties liable on same contract The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes. 7. When plaintiff in doubt from whom redress is to be sought Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties. 8. One person may sue or defend on behalf of all in same interest (1) Where there are numerous persons having the same interest in one suit,-- (a) one or more of such persons may, with the permission of the court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested; (b) the court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested. (2) The court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where , by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court in each case may direct. (3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the court to be made a party to such suit. (4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3) of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the court has given, at the plaintiff's expenses notice to all persons so interested in the manner specified in sub-rule (2). (5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the court may substitute in his place any other person having the same interest in the suit. (6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended , as the case may be. Explanation : For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be. 8A. Power of court to permit a person or body of persons to present opinion or to take part in the proceedings While trying a suit, the court may, if satisfied that a person or body of persons is interested in

any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion that question of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the court may specify.

9. Mis-joinder and non-joinder No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it: PROVIDED that nothing in this rule shall apply to non-joinder of a necessary party.

10. Suit in name of wrong plaintiff (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just. (2) Court may strike out or add parties--The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent. (4) Where defendant added, plaint to be amended--Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant. (5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

10A. Power of court to request any pleader to address it The court may, in its discretion, request any pleader to address it as to any interest which is likely to be affected by its decision on any matter in issue in any suit or proceeding, if the party having the interest which is likely to be so affected is not represented by any pleader.

11. Conduct of suit The court may give the conduct of a suit to such person as it deems proper.

12. Appearance of one of several plaintiffs or defendants for others (1) Where there are more plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceedings; and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding. (2) The authority shall be in writing signed by the party giving it and shall be filed in court.

13. Objections as to non-joinder or mis-joinder All objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER II FRAME OF SUIT

1. Frame of suit Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2. Suit to include the whole claim (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. (2) Relinquishment of part of claim--Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. (3) Omission to sue for one of several reliefs--A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation : For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

3. Joinder of causes of action (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit. (2) Where causes of action are united, the jurisdiction of the court as

regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit. 4. Only certain claims to be joined for recovery of immovable property 4 No cause of action shall, unless with the leave of the court, be joined with a suit for the recovery of immovable property, except-- (a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof; (b) claims for damages for breach of any contract under which the property or any part thereof is held; and (c) claims in which the relief sought is based on the same cause of action: PROVIDED that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property. 5. Claims by or against an executor, administrator or heir No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents. 6. Power of court to order separate trials Where it appears to the court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the court may order separate trials or make such other order as may be expedient in the interests of justice. 7. Objections as to mis-joinder All objections on the ground of mis-joinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER III RECOGNISED AGENTS AND PLEADERS

1. Appearances, etc., may be in person, by recognized agent or by pleader Any appearance, application or act in or to any court, required or authorised by law to be made or done by a party in such court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf : PROVIDED that any such appearance shall, if the court so directs, be made by the party in person. 2. Recognised agents The recognized agents of parties by whom such appearance, applications and acts may be made or done are-- (a) persons holding powers of attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties; (b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts. 3. Service of process on recognised agent (1) Processes served on the recognised agent of a party shall be as effectual as if the same had been served on the party in person, unless the court otherwise directs. (2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognised agent. 4. Appointment of pleader (1) No pleader shall act for any person in any court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorized by or under a power of attorney to make such appointment. (2) Every such appointment shall be filed in court and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the court by a writing signed by the client or the pleader, as the case may be, and filed in court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client. Explanation : For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,-- (a) an application for the review of decree or order in the suit; (b) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit, (c) an appeal from any decree or order in the suit, and (d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the court in connection with the suit. (3) Nothing in sub-rule (2) shall be construed-- (a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or (b) as authorizing service on the pleader of any notice or document issued by any court other than the court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1). (4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order. (5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in court a memorandum of appearance signed by himself and stating-- (a) the names of the parties to the suit, (b) the name of the party for whom he appears; and (c) the name of the person by whom he is authorized to appear: PROVIDED that

nothing in sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in court on behalf of such party.

5. Service of process on pleader Any process served on the pleader who has been duly appointed to act in Court for any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

6. Agent to accept service (1) Besides the recognised agents described in rule 2 any person residing within the jurisdiction of the court may be appointed an agent to accept service of process. (2) Appointment to be in writing and to be filed in court--Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in court. (3) The court may, at any stage of the suit, order any party to the suit not having a recognised agent residing within the jurisdiction of the court, or a pleader who has been duly appointed to act in the court on his behalf, to appoint, within a specified time, an agent residing within the jurisdiction of the court to accept service of the process on his behalf.

ORDER IV INSTITUTION OF SUITS

1. Suit to be commenced by plaint (1) Every suit shall be instituted by presenting a plaint in duplicate to the court or such officer as it appoints in this behalf. (2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable. (3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).

2. Register of suits The court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

ORDER V ISSUE AND SERVICE OF SUMMONS

ISSUE OF SUMMONS

1. Summons (1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, on such day within thirty days from the day of institution of the suit as may be specified therein: PROVIDED that no such summons shall be issued when a defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim: PROVIDED FURTHER that where the defendant fails to file the written statement on the said day, he shall be allowed to file the same on such other day which shall not be beyond thirty days from the date of service of summons on the defendant, as the court may think fit. (2) A defendant to whom a summons has been issued under sub-rule (1) may appear-- (a) in person, or (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or (c) by pleader accompanied by some person able to answer all such questions. (3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the court.

2. Copy of plaint annexed to summons Every summons shall be accompanied by a copy of the plaint.

3. Court may order defendant or plaintiff to appear in person (1) Where the court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in court on the day therein specified. (2) Where the court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

4. No party to be ordered to appear in person unless resident within certain limits No party shall be ordered to appear in person unless he resides,-- (a) within the local limits of the Court's ordinary original jurisdiction, or (b) without such limits but at place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the court is situate) less than two hundred miles distance from the court house.

5. Summons to be either to settle issues or for final disposal The court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly: PROVIDED that, in every suit heard by a court of small causes, the summons shall be for the final disposal of the suit.

6. Fixing day for appearance of defendant The day under sub-rule (1) of rule 1 shall be fixed with reference to the current business of the court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

7. Summons to order defendant to produce documents relied on by him The summons to appear and answer shall order the defendant to produce all documents or copies thereof specified in rule 1A of Order VIII in his possession or power upon which he intends to rely in support of his case.

8. On issue of summons for final disposal, defendant to be directed to produce his witnesses Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose

evidence he intends to rely in support of his case.

SERVICE OF SUMMONS

9. Delivery of summons by court

(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court. (2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct. (3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgement due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court: PROVIDED that the service summons under this sub-rule shall be made at the expenses of the plaintiff. (4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgement due), the provisions of rule 21 shall not apply. (5) When an acknowledgement or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant: PROVIDED that where the summons was properly addressed, pre-said and duly sent by registered post acknowledgement due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgement having been lost or mislaid, or for any other reasons, has not been received by the Court within thirty days from the date of issue of summons. (6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

9A. Summons given to the plaintiff for service

(1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service. (2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9. (3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a servicing officer. (4) If such summons, when tendered, is refused for if the person served refuses to sign an acknowledgement of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

10. Mode of service

Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the court.

11. Service on several defendants

Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

12. Service to be on defendant in person when practicable, or on his agent

Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

13. Service on agent by whom defendant carries on business

(1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service. (2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

14. Service on agent in charge in suits for immovable property

Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

15. Where service may be on an adult member of defendant's family

Where in any

suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him. Explanation : A Servant is not a member of his family within the meaning of this rule. 16. Person served to sign acknowledgement Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original summons. 17. Procedure when defendant refuses to accept service, or cannot be found Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed. 18. Endorsement of time and manner of service The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons. 19. Examination of serving officer Where a summons is returned under rule 17, the court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit. 19A. [* * *] 20. Substituted service (1) Where the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit. (1A) Where the court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain. (2) Effect of substituted service--Service substituted by order of the court shall be as effectual as if it had been made on the defendant personally. (3) Where service substituted, time for appearance to be fixed--Where service is substituted by order of the court, the court shall fix such time for the appearance of the defendant as the case may require. 20A. Service of summons by post [Repealed by the Code of Civil Procedure (Amendment) Act, 1976, w.e.f. 1-2-1977.] 21. Service of summons where defendant resides within jurisdiction of another court A summons may be sent by the court by which it is issued, whether within or without the State, either by one of its officers or by post or by such courier service as may be approved by the High Court, by fax message or by electronic mail service or by any other means as may be provided by the rules made by the High Court to any court (not being the High Court) having jurisdiction in the place where the defendant resides. 22. Service, within presidency towns, of summons issued by courts outside Where a summons issued by any court established beyond the limits of the towns of Calcutta, Madras and Bombay is to be served within any such limits, it shall be sent to the court of small causes within whose jurisdiction it is to be served. 23. Duty of court to which summons is sent The court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such court and shall then return the summons to the court of issue, together with the record (if any) of its proceedings with regard thereto. 24. Service on defendant in prison Where the defendant is confined in a prison, the summons shall be delivered or sent or by post or by such courier service as may be approved by the High Court, by fax message or by electronic mail service or by any other means as may

be provided by the rules made by the High Court to the officer in charge of the prison for service on the defendant. 25. Service on defendant resides out of India and has no agent Where the defendant reside out of India and has not agent in India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him or by post or by such courier service as may be approved by the High Court, by fax message or by electronic mail service or by any other means as may be provided by the rules made by the High Court, if there is postal communication between such place and the place where the court is situate: PROVIDED that where any such defendant resides in Bangladesh or Pakistan, the summons, together with a copy thereof, may be sent for service on the defendant, to any court in that country (not being the High Court) having jurisdiction in the place where the defendant resides: PROVIDED FURTHER that where any such defendant is a public officer in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces) or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf. 26. Service in foreign territory through political agent or court Where-- (a) in the exercise of any foreign jurisdiction vested in the Central Government, a political agent has been appointed, or a court has been established or continued, with power to serve a summons, issued by a court under this Code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or (b) the Central Government has, by notification in the Official Gazette, declared, in respect of any court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such court of any summons issued by a court under this Code shall be deemed to be valid service, the summons may be sent to such political agent or court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant; and, if the political agent or court returns the summons with an endorsement purporting to have been made by such political agent or by the Judge or other officer of the court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service. 26A. Summonses to be sent to officers of foreign countries Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service. 27. Service on civil public officer or on servant of railway company or local authority Where the defendant is a public officer (not belonging to the Indian military naval or air forces, or is the servant of a railway company or local authority, the court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed together with a copy to be retained by the defendant. 28. Service on soldiers, sailors or airmen Where the defendant is a soldier, sailor or airman, the court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant. 29. Duty of person to whom summons is delivered or sent for service (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it if possible, and to return it under his signature, with the written acknowledgement of the defendant, and such signature shall be deemed to be evidence of service. (2) Where from any cause service is impossible, the summons shall be returned to the court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service. 30. Substitution of letter for summons (1) The court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the court, of a rank entitling him to such mark of consideration. (2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and subject to the provisions of sub-rule (3), shall be treated in all respects as a summons. (3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the court, or in any other manner which

the court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

ORDER VI PLEADINGS GENERALLY

1. Pleading "Pleading" shall mean plaint or written statement.

2. Pleading to state material facts and not evidence (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 defence, as the case may be, but not the evidence by which they are to be proved. (2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph. (3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

3. Forms of pleading The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

4. Particulars to be given where necessary In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with date and items if necessary) shall be stated in the pleading.

5. [* * *]

6. Condition precedent Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

7. Departure No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

8. Denial of contract Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

9. Effect of document to be stated Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

10. Malice, knowledge, etc. Wherever 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 to be inferred.

11. Notice Wherever 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.

12. Implied contract, or relation 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 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.

13. Presumptions of law Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (e.g., consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

14. Pleading to be signed Every pleading shall be signed by the party and his pleader (if any): PROVIDED that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

14A. Address for service of notice (1) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party. (2) Such address may, from time to time, be changed by lodging in court a form duly filled up and stating the new address of the party and accompanied by a verified petition. (3) The address furnished in the statement made under sub-rule (1) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or matter. (4) Service of any process may be effected upon a party at his registered address in all respects as though such party resided thereat. (5) Where the registered address of a party is discovered by the court to be incomplete, false or fictitious, the court may, either on its own motion, or on the application of any party, order-- (a) in case where such registered address was furnished by a plaintiff, stay of the suit, or (b) in case where such registered address was furnished by a

defendant, his defence be struck out and he be placed in the same position as if he had not put up any defence. (6) Where a suit is stayed or a defence is struck out under sub-rule (5), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the court for an order to set aside the order of stay or, as the case may be, the order striking out the defence. (7) The court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such terms as to costs or otherwise as it thinks fit and shall appoint a day or proceeding with the suit or defence, as the case may be. (8) Nothing in this rule shall prevent the court from directing the service of a process at any other address, if for any reason, it thinks fit to do so.

15. Verification of pleadings (1) Save as otherwise provided by any law for the time being in force, every pleading 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. (2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true. (3) 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. (4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

16. Striking out pleadings 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.

17. Amendment of pleadings The 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: PROVIDED that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

18. Failure to amend after Order If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for the purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

ORDER VII PLAINT

1. Particulars to be contained in plaint The plaint shall contain the following particulars:-- (a) the name of the court in which the suit is brought; (b) the name, description and place of residence of the plaintiff; (c) the name, description and place of residence of the defendant, so far as they can be ascertained; (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect; (e) the facts constituting the cause of action and when it arose; (f) the facts showing that the court has jurisdiction; (g) the relief which the plaintiff claims; (h) where the plaintiff has allowed a set off or relinquished a portion of his claim the amount so allowed or relinquished; and (i) a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

2. In money suits Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed: But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for.

3. Where the subject matter of the suit is immovable property Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

4. When plaintiff sues as representative Where the plaintiff sues in a representative character, the plaint shall show not only that he has an actual existing interest in the subject matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

5. Defendant's interest and liability to be shown The plaint shall show that the defendant is or claims to be interested in the subject matter, and that he is liable to be called upon to answer the plaintiff's demand.

6. Grounds of exemption from limitation law Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed: PROVIDED that the court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.

7. Relief to be specifically stated Every plaint shall state specifically the relief which the plaintiff claims either simply or in

the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement. 8. Relief founded on separate grounds Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly. 9. Procedure on admitting plaint Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants. 10. Return of plaint (1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the court in which the suit should have been instituted. Explanation : For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule. (2) Procedure on returning --On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it. 10A. Power of court to fix a date of appearance in the court where plaint is to be filed after its return (1) Where, in any suit, after the defendant has appeared, the court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff. (2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the court-- (a) specifying the court in which he proposes to present the plaint after its return, (b) praying that the court may fix a date for the appearance of the parties in the said court, and (c) requesting that the notice of the date so fixed may be given to him and to the defendant. (3) Where an application is made by the plaintiff under sub-rule (2), the court shall, before returning the plaint and notwithstanding that the Order for return of plaint was made by it on the ground that it has not jurisdiction to try the suit,-- (a) fix a date for the appearance of the parties in the court in which the plaint is proposed to be presented, and (b) give to the plaintiff and to the defendant notice of such date for appearance. (4) Where the notice of the date for appearance is given under sub-rule (3),-- (a) it shall not be necessary for the court in which the plaint is presented after its return, to serve the defendant with the summons for appearance in the suit, unless that court, for reasons to be recorded, otherwise directs, and (b) the said notice shall be deemed to be a summons for the appearance of the defendant in the court in which the plaint is presented on the date for fixed by the court by which the plaint was returned. (5) Where the application made by the plaintiff under sub-rule (2) is allowed by the court, the plaintiff shall not be entitled to appeal against the Order returning the plaint. 10B. Power of appellate court to transfer suit to the proper court (1) Where, on an appeal against an Order for the return of plaint, the court hearing the appeal confirms such order, the court of appeal may, if the plaintiff by an application so desires, while returning the plaint, direct plaintiff to file the plaint, subject to the provisions of the Limitation Act, 1963 (36 of 1963), in the court in which the suit should have been instituted, (whether such court is within or without the State in which the court hearing the appeal is situated), and fix a date for the appearance of the parties in the court in which the plaint is directed to be filed and when the date is so fixed it shall not be necessary for the court in which the plaint is filed to serve the defendant with the summons for appearance in the suit, unless that court in which the plaint is filed, for reasons to be recorded, otherwise directs. (2) The directions made by the court under sub-rule (1) shall be without any prejudice to the rights of the parties to question the jurisdiction of the court, in which the plaint is filed, to try the suit. 11. Rejection of plaint The plaint shall be rejected in the following cases:-- (a) where it does not disclose a cause of action; (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so; (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so; (d) where the suit appears from the statement in the plaint to be barred by any law; (e) where it is not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of rule 9; PROVIDED that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff. 12. Procedure on rejecting plaint Where a plaint is rejected, the Judge shall record an Order to that effect with the reasons for such order. 13. Where rejection of plaint does

not preclude presentation of fresh plaint The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. DOCUMENTS RELIED ON IN PLAINT 14. Production of document on which plaintiff sues or relies (1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint. (2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is. (3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. (4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.

15. [* * *] 16. Suits on lost negotiable instruments Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the court, against the claims of any other person upon such instrument, the court may pass such decree as it would have passed if the plaintiff had produced the instrument in court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

17. Production of shop book (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (18 of 1891), where the document on which the plaintiff sues is an entry in a shop book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies. (2) Original entry to be marked and returned--The court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification, and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

ORDER VIII WRITTEN STATEMENT, SET OFF AND COUNTER CLAIM 1. Written statement The defendant shall, within thirty days from the date of service summons on him, present a written statement of his defence: PROVIDED that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement. (2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is. (3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. (4) Nothing in this rule shall apply to documents-- (a) produced for the cross-examination of the plaintiff's witnesses, or (b) handed over to a witness merely to refresh his memory.

2. New facts must be specially pleaded The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, of facts showing illegality.

3. Denial to be specific It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4. Evasive denial Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Specific denial (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: PROVIDED that the court may in its discretion require any fact so admitted to be proved

otherwise than by such admission. (2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the court may, in its discretion, require any such fact to be proved. (3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader. (4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced. 6. Particulars of set off to be given in written statement (1) Where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the court, present a written statement containing the Particulars of the debt sought to be set off. (2) Effect of set off--The written statement shall have the same effect as a plaint in a cross suit so as to enable the court to pronounce a final judgment in respect both of the original claim and of the set off; but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree. (3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set off. Illustrations (a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000. (b) A dies intestate and in debt to B, C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase money by C against B, the latter cannot set off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A. (c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set off. The amount not being ascertained cannot be set-off. (d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite, pecuniary demands may be set off. (e) A sues B for compensation on account of trespass. B holds a promissory note for Rs. 1,000 from A and claims to set off that amount against any sum that A may recover in the suit. B may do so, for as soon as A recovers, both sums are definite pecuniary demands. (f) A and B sue C for Rs. 1,000. C cannot set off a debt due to him by A alone. (g) A sues B and C for Rs. 1,000. B cannot set off a debt due to him alone by A. (h) A owes the partnership firm of B and C, Rs. 1,000. B dies, leaving C surviving A sues C for a debt of Rs. 1,500 due in his separate character. C may set off the debt of Rs. 1,000. 6A. Counter claim by defendant (1) A defendant in a suit may, in addition to his right of pleading a set off under rule 6, set up, by way of counter claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not: PROVIDED that such counter claim shall not exceed the pecuniary limits of the jurisdiction of the court. (2) Such counter claim shall have the same effect as a cross suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counter claim. (3) The plaintiff shall be at liberty to file a written statement in answer to the counter claim of the defendant within such period as may be fixed by the court. (4) The counter claim shall be treated as a plaint and governed by the rules applicable to plaints. 6B. Counter claim to be stated Where any defendant seeks to rely upon any ground as supporting a right of counter claim, he shall, in his written statement, state specifically that he does so by way of counter claim. 6C. Exclusion of counter claim Where a defendant sets up a counter claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter claim, apply to the court for an Order that such counter claim may be excluded, and the court may, on the hearing of such application make such Order as it thinks fit. 6D. Effect of discontinuance of suit If in any case in which the defendant sets up a counter claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter claim may nevertheless be proceeded with. 6E. Default of plaintiff to reply to counter claim If the plaintiff makes default in putting in a reply to the counter claim made by the defendant, the court may pronounce judgment against the plaintiff in relation to the counter claim made against him, or make such Order in relation to the counter claim as it thinks fit. 6F.

Relief to defendant where counter claim succeeds Where in any suit a set off or counter claim is established as a defence against the plaintiff's claim, and nay balance is found due to the plaintiff or the defendant, as the case may be, the court may give judgment to the party entitled to such balance. 6G. Rules relating to written statement to apply The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter claim. 7. Defence or set off founded on separate grounds Where the defendant relies upon several distinct grounds of defence or set off or counter claim founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. 8. New ground of defence Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set off or counter claim may be raised by the defendant or plaintiff, as the case may be, in his written statement. (1) Where a defendant bases his defence upon a document in his possession or power, he shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document or a copy thereof, to be filed with the written statement (2) A document which ought to be produced in Court by the defendant under this rule, but is not so produced, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. (3) Nothing in this rule shall apply to documents produced: (a) for the cross-examination of the plaintiff's witnesses, or (b) in answer to any set up by the plaintiff subsequent to the filling of the plaint, or (c) handed over to a witness merely to refresh his memory."> 9. Subsequent pleadings No pleading subsequent to the written statement of a defendant other than by way of defence to set off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same. 10. Procedure when party fails to present written statement called for by Court Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.

ORDER IX APPEARANCE OF PARTIES AND CONSEQUENCE OF NON APPEARANCE 1. Parties to appear on day fixed in summons for defendant to appear and answer On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the court house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the court. 2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges, if any, chargeable for such service, or failure to present copies of the plaint as required by rule 9 of Order VII, the Court may make an order that the suit be dismissed: PROVIDED that no such order shall be made, if notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer. 3. Where neither party appears, suit to be dismissed Where neither party appears when the suit is called on for hearing, the court may make an Order that the suit be dismissed. 4. Plaintiff may bring fresh suit or court may restore suit to file Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an Order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for such failure as is referred to in rule 2, or for his non appearance, as the case may be, the court shall make an Order setting aside the dismissal and shall appoint a day for proceeding with the suit. 5. Dismissal of suit where plaintiff, after summons returned unserved, fails for seven days to apply for fresh summons (1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of seven days from the date of return made to the court by the officer ordinarily certifying to the court returns made by the serving officers, to apply for the issue of a fresh summons the court shall make an Order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the court that-- (a) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or (b) such defendant is avoiding service of process, or (c) there is any other sufficient cause of extending the time, in which case the court may extend the time for making such application for such period as it thinks fit. (2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit. 6. Procedure when only plaintiff appears Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then (a) When summons duly served--If it is proved that the summons was duly served, the court may make an Order

that the suit be heard ex parte; (b) When summons not duly served--if it is not proved that the summons was duly served, the court shall direct a second summons to be issued and served on the defendant; (c) When summons served but not in due time--if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the court shall postpone the hearing of the suit to a future day to be fixed by the court, and shall direct notice of such day to be given to the defendant. (2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the court shall Order the plaintiff to pay the costs occasioned by the postponement. 7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non appearance Where the court has adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance. 8. Procedure where defendant only appears Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the court shall make an Order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder. 9. Decree against plaintiff by default bars fresh suit (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an Order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non appearance when the suit was called on for hearing, the court shall make an Order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit. (2) No Order shall be made under this rule unless notice of the application has been served on the opposite party. 10. Procedure in case of non-attendance of one or more of several plaintiffs Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such Order as it thinks fit. 11. Procedure in case of non attendance of one or more of several defendants Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the court shall, at the time of pronouncing judgment, make such Order as it thinks fit with respect to the defendants who do not appear. 12. Consequence of non attendance, without sufficient cause shown, of party ordered to appear in person Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear. SETTING ASIDE DECREES EX PARTE 13. Setting aside decree ex parte against defendant In any case in which a decree is passed ex parte against a defendant, he may apply to the court by which the decree was passed for an Order to set it aside; and if he satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an Order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit: PROVIDED that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be sent aside as against all or any of the other defendant also: PROVIDED FURTHER that no court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim. Explanation : Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule of setting aside the ex parte decree. 14. No decree to be set aside without notice to opposite party No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party ORDER X EXAMINATION OF PARTIES BY THE COURT 1. Ascertainment whether allegations in pleadings are admitted or denied At the first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The court shall record such admission and denials. 1A. Direction of the court to opt for any one mode of alternative dispute resolution After recording the admissions and denials, the court

shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties. 1B. Appearance before the conciliatory forum or authority Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit. 1C. Appearance before the court consequent to the failure of efforts of conciliation Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it. 2. Oral examination of party, or companion of party (1) At the first hearing of the suit, the court-- (a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in court, as it deems fit; and (b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in court or his pleader is accompanied. (2) At any subsequent hearing, the court may orally examine any party appearing in person or present in court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied. (3) The court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party. 3. Substance of examination to be written The substance of the examination shall be reduced to writing by the judge, and shall form part of the record. 4. Consequence of refusal or inability of pleader to answer (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the court may postpone the hearing of the suit to a day not later than seven days from the date of first hearing and direct that such party shall appear in person on such day. (2) If such party fails without lawful excuse to appear in person on the day so appointed, the court may pronounce judgment against him, or make such Order in relation to the suit as it thinks fit.

ORDER XI DISCOVERY AND INSPECTION 1. Discovery by interrogatories In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: PROVIDED that no party shall deliver more than one set of interrogatories to the same party without an Order for that purpose: PROVIDED also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross examination of a witness. 2. Particular interrogatories to be submitted On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs. 3. Costs of interrogatories In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault. 4. Form of interrogatories Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require. 5. Corporations Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an Order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an Order may be made accordingly. 6. Objections to interrogatories by answer Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other grounds may be taken in the affidavit in answer. 7. Setting aside striking out interrogatories Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for

this purpose may be made within seven days after service of the interrogatories. 8. Affidavit in answer, filing Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow. 9. Form of affidavit in answer An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require. 10. No exception to be taken No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court. 11. Order to answer or answer further Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an Order requiring him to answer, or to answer further, as the case may be. And an Order may be made requiring him to answer, or to answer further, either by affidavit or by viva voce examination, as the court may direct. 12. Application for discovery of documents Any party may, without filing any affidavit, apply to the court for an Order directing any other party to any suit to make discovery on oath of the documents which are or have been his possession or power, relating to any matter in question therein. On the hearing of such application the court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: PROVIDED that discovery shall not be ordered when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs. 13. Affidavit of documents The affidavit to be made by a party against whom such Order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require. 14. Production of documents It shall be lawful for the court, at any time during the pendency of any suit, to Order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the court shall think right; and the court may deal with such documents, when produced, in such manner as shall appear just. 15. Inspection of documents referred to in pleadings or affidavits Every party to a suit shall be entitled at or before the settlement of issues to give notice to any other party, in whose pleadings or affidavits reference is made to any document, or who has entered any document in any list annexed to his pleadings, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the court shall deem sufficient for not complying with such notice, in which case the court may allow the same to be put in evidence on such terms as to costs and otherwise as the court shall think fit. 16. Notice to produce Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require. 17. Time for inspection when notice given The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require. 18. Order for inspection (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the court may, on the application of the party desiring it, make an Order for inspection in such place and in such manner as it may think fit: PROVIDED that the Order shall not be made when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs. (2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The court shall not make such Order for inspection of such documents when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs. 19. Verified copies (1) Where inspection of any business books is applied for, the court may, if it thinks fit, instead of ordering inspection of the original books, Order a copy of any entries therein to be

furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: PROVIDED that, notwithstanding that such copy has been supplied, the court may Order inspection of the book from which the copy was made. (2) Where on an application for an Order for inspection privilege is claimed for any document, it shall be lawful for the court to inspect the document for the purpose of deciding as to the validity of the claim of privilege unless the document relates to matters of State. (3) The court may, on the application of any party to a suit at any time and whether an affidavit of documents shall or shall not have already been ordered or made, make an Order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them. 20. Premature discovery Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, Order that such issue or question be determined first, and reserve the question as to the discovery or inspection. 21. Non compliance with Order for discovery (1) Where any party fails to comply with any Order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the court for an Order to that effect, and an Order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard. (2) Where an Order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action. 22. Using answers to interrogatories at trial Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: PROVIDED always that in such case the court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last mentioned answers ought not to be used without them, it may direct them to be put in. 23. Order to apply to minors This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability. ORDER XII ADMISSION 1. Notice of admission of case Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party. 2. Notice to admit documents Either party may call upon the other party to admit, within seven days from the date of service of the notice any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the court, a saving of expense. 2A. Document to be deemed to be admitted if not denied after service of notice to admit documents (1) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability: PROVIDED that the court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission. (2) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the court may direct him to pay costs to the other party by way of compensation. 3. Form of notice A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require. 3A. Power of court to record admission Notwithstanding that no notice to admit documents has been given under rule 2, the court may, at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall, in such a case, record whether the party admits or refuses or neglects to admit such document. 4. Notice to admit facts Any party, may, by notice in writing, at any time not later than nine days

before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the court otherwise directs: PROVIDED that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of this particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice. [* *]

5. Form of admission A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

6. Judgment on admissions (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such Order or give such judgment as it may think fit, having regard to such admissions. (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

7. Affidavit of signature An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

8. Notice to produce documents Notice to produce documents shall be in Form No. 12 Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

9. Costs If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice