

DEDICATION

PLEADING BOOK FOR INDIAN LITIGANTS THROUGH FREE E BOOKS WEB SITE, JULY 2012 EDITION



This Book is dedicated to Hon'ble Mr. Justice Dalveer Bhandari, Hon'ble Judge, International Court of Justice. The Author prays for his blessings.

He had saved the life of Author of this book, with his orders in the Writ Petition (Civil) 4865 of 1996 of the Hon'ble High Court of Delhi, on dates 03-1-1997 and 20-1-1997; sitting singly in Service Matter Bench, titled Ramanathan.G vs. Indian Air Force & Ors. On 10-03-1997, he had taught the Author, the Rules of Pleadings, with four simple questions, in an interlocutory application from the same writ petition. Those points were my guidelines to prepare pleadings, and now to write this book.

The proverb about his Courts, it is heard from other Advocates and Litigants, by the Author that: "Dalveer Bhandari does not do injustice". I had done my level best while attending each client, and while writing each lines, to not to injustice.

THANKS AND ACKNOWLEDGMENT

The “list of contents” given by Mr. Rajiv Rahjea, Advocate, Proprietor of M/s Capital Law Publishers, Tis Hazari Courts, Delhi; the money given as advance by him to do the legal research about said “list of contents” had only resulted in this book, without which, I might have never done research about those chapters. Rrajive@gmail.com.

His twin brother Mr. Sanjiv Raheja, Advocate, Proprietor of M/s Capital Law Infotech, Vishwas Nagar, Shahdra, Delhi; had provided me his own laptop computer with 3 softwares loaded in that computer (Legal Eagle Delhi High Court, Allahabad High Court and Criminal Judgments of all the Courts), without which help, legal research for this book might never have been possible. I am also acknowledging his permission to re-produce the copyrighted head notes of Legal Eagle Softwares, in this book. Sanjur1973@yahoo.com. Unless I will tell my thanks to both of them, this book will remain incomplete.

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LIST OF CONTENTS AND INDEX

My knowledge gained between July 2010 to till July 2012, are given at the end of the book, due to shortage of time, I could not re-edit the book, to include them at correct places.

Due to shortage of time, I could not prepare them for now, but that also will be completed and re-submitted.

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the book commences from here:-

Introduction by the Author

1. The difficulties faced by a person who want to prepare a Pleadings to file in any Court, or a Conveyancing deed to determine rights and duties of the persons out-of-Court, whether as an Advocate, or as an “In Person”, is written by Gandhiji; regarding his State of Mind as an Advocate, at his age of 22 years, which is completely quoted from the Book: “The Law And the Lawyers”, published by Navajivan Publishing House, Ahmedabad:- At page 13: “My helplessness: It was easy to be called to the Bar but it was difficult to practice at the Bar. I had read the laws, but not learnt how to practice law. I had read with interest the Legal Maxims, but did not know how to apply them in my profession, for the benefit of one’s client. I had read all the leading cases on this maxim, but they gave me no confidence in the application of it in the practice of law. I had not even learnt how to draft a plaint, and felt completely at sea. I had serious misgivings as to whether I should be able even to earn a living by the profession”.

2. The difficulty faced to materialize this Book is also same. Simply by narrating Legal Maxims and related Case law, accompanied by a Pleading, there is no guarantee that, how anyone can draft his own pleadings. Those who start their Advocate Career from any other Advocate who have more experience, it is more easy being “Guru” will be available for clarifying the doubts. However, lateral entry Advocates do not get opportunity to get a Guru. It is known to everybody that, simply narrating the Facts, Grounds and Prayer is Pleadings. However, only while starting to work, the Difficulties narrated by Gandhi will start

and the loss of self-confidence will arise. This book is written to cover this particular point of loss of confidence, to tell how to write the Facts, Grounds and Prayer.

3. The Author is a Practicing Advocate. During his Advocate practice, what are the importance instances had come to his knowledge and memory are utilised to write this book. Writing pleading and conveyancing is not an easy task. Duty of the Advocate is always confused. It is related to the honesty and bonafideness of the client. Some clients do consider the Advocate to be their best friends, while others consider the Advocates as Robbers or parasites. It is very easy to work for the 2nd category of clients, to work for them, you require no knowledge at all, being their death is not going to pain you. Whereas any mistake committed by us should not hurt the welfare of 1st category of clients. This book is meant for Beginners in the Advocate profession, and for others who want to conduct their case as "In person", without help from any Advocate.

4. Whether making a Pleading or Conveyancing, for a client who respects and want to protect his Advocate's welfare, the Advocate bears a tough duty. He should not leave anything "ambiguous", means suspicious. If there are any such terms, that will result in unending litigations, and the Judges will have to examine entire facts and find out, what the Advocate failed to write in length. Normally both the parties are related and previously known to one another and the Advocate and Judiciary are outsiders. However, normally the clients are coming to us, not to get a cause of action to file a case, but to sort out their mutual disputes amicably. On the other hand, if a Stronger man will come to us with a request to prepare a foolish document/ contract/ partnership deed; to fool his Weaker relative/ friend, my principle is, even if I am sitting without work, I do not do that work, because of two reasons: (1) I cannot permit a Weak party to be fooled by a person stronger than him, and (2) Some times, the Weaker may be pretending to be a Weaker, only because of some "previous debt" or Emotional Black-mail, and he may be stronger than the strong, in that case, the said Weaker Party will file Bar Council Complaint. I used the same principles while writing this book also.

5. I had made best efforts to prepare best book. However, all the Law Journals published in India is not available for my reading. I cannot understand the English language written in Foreign law books. Thus if the Readers can make corrections to my mistakes, or give me Good citations from which I can extract Law Points, I will be very thankfull. This will be done to ensure that, "pleadings and conveyancing" are two documents which ab-initio decides the Rights and Duties of parties inter-se and I do not want any mistake in this book.

6. Another offer I make to help the person who purchase this book is, to inform me his E-mail address, along with Photocopy of the Receipt/ Cash Bill of the shop. In return, what are the corrections will be made in this book, relying upon further Judicial pronouncements or relying upon the suggestions received by me in the previous para, will be communicated, without any delay. Such purchasers will have no need to buy the next revised edition of this book, being all the up-dations in each of the chapters will be separately communicated to them, which they can down-load, take print and paste at appropriate places.

Thanking You. Yours truly.

G. Ramanathan Iyer, Advocate,
Enrolment Number Delhi-1282/2000.

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A very imp point about writing Survey numbers in Conveyance documents is written not in the beginning, but at a later part, which is copy-pasted here because of it's importance:

Deeds and Agreements involving Land:-

The Publisher had given a few Conveyancing Deeds to the Author to correct them and approve for Printing in the Book. While perusing them, this Lecture/ Note are found to be required to be written.

KHASRA NUMBER or SURVEY NUMBER:- Government have Revenue Officials, for each place, which also have various Hierarchy like Police Stations and Post Offices; and at some States like Uttarakhand or certain parts of Uttar Pradesh, the Revenue Officials work as Police Officials also. Their duty is to measure entire land within their jurisdiction and maintain Site Plan or Maps for entire land at their Area. After such measuring, depending upon the directions of State Government of Government of India, each land is allotted a number, which is called "Khasra Number or Survey Number". In this, the present Owner's name also will be written.

Why it is legislated that, transfer of Immovable Property is to be Registered is, from the Land Registration Sub-Registrar's office, the data will go to Revenue Official, and he will write the details of transfer in his Records. It is called Mutation.

In various States, under criminal law, not only Policeman, but also the Revenue Official should visit each place of crime and prepare his own Site Plan. It will ensure that, rightful owner of the said land can be charged for crime or negligence.

In the transfer of Immovable properties, due to this reason, not only Door Number is necessary; but also "Khasra Number or Survey Number" is necessary. In a case handled by the Author, under the Punjab Village Common Lands Act (PVCL Act), the Hon'ble HC of Punjab and Haryana asked the Sale Deed Holder/ Appellant's Advocate to find out "Khasra Number or Survey Number" from the Exhibit, when said details could not be found, the Appeal was dismissed for that reason only. Reason is, unless said details is there, the Revenue Officials cannot do Mutation, to write Land Holder's name in Government Record, and he deserves no relief.

This Lecture/ Note is written to ensure that, even when due to oversight the Author himself forgot to write "Khasra Number or Survey Number" at any place, the Students/ Reader of this Book do not forget to write that – Author.

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CHAPTER-1 PLEADINGS GENERALLY

There is only one technique of writing pleadings. That is given as follows. This guide-line is same for Plaintiff, Written Statement, Counter-claim, criminal

complaint, Written Statement of the accused in a criminal case, Appeal, Revision, Writ petitions, SLPs before Supreme Court: you take any name or any Court, it is the only format:-

1. Addressed to whom:- It can be given to a Court, or to any Government Offices, like Police Station, or to the Opposite Party. Generally while addressing a Court, at the top, it will be written in Capital letters:- "In the Hon'ble Court of....., at.....". However, it is not compulsory. It can be very well commenced with the words: "To, The Court of....., Address...". Thus, whether to file an Original Petition, Complaint, First Appeal, Second Appeal, Special Leave Petition before Supreme Court, or Writ Petitions, the Format of Ordinary Letters is sufficient.

2. How can be filed:- Many decades ago, unless an aggrieved person or Appellant will appoint an Advocate, and every time personally appear in the Court, no Judicial proceedings were permissible. Even now the same rules are existing in the Books, but there is Legal Aid Committees till grass root level. Advocates are appointed in the Panel of said legal aid Committees. The letters written to a Court are "marked" to those Advocates according to their roster, and at first they should give Legal Opinion, and regular petition should be filed by them and appeared by them. Through letters, the Affidavits will be send to the person who wrote the letters to the Court or Judges, which should be signed and returned back. How the Government's Advocates will get money from the Government, in the same manner the Accused/ Plaintiffs/ Appellants in Civil Cases's Advocates also will get Fees from the Legal Aid Committees. Legal Aid Committees get Grants from Government. To repeat, simple letter to any Magistrates, Civil Judge Courts; and up to Supreme Court are entertained as Plaints, Petitions, Appeals, Writ Petitions etc.

3. Format of Petition/ Appeal/ Revision/ Plaint etc:- The Judicial Systems had thousands of loop-holes to cause delay. Many of them are closed/ pegged in the years 1999 and 2002 through Code of Civil Procedure, 1908 Amendments. Thus, since 2002, the law is equal to common sense to control delay. Previously even in-experienced persons were able to delay justice to opposite party. Now only Experienced persons, only with previous acquaintenance of Judicial Officers, can cause delay to do injustice to the opposite party.

3.1. Following are the Formats of Original Petition/ Plaint/ Suit/ Complaint/ Writ Petition etc:-

3.1.1. Name and addresses of parties. In this Pleading, complete details and addresses of parties are given. Normally it should be filed in Original + Copy, or two originals; in that one Original will be with the File for reading of Judges and the other copy will be send to Certified Copying Section, for identifying that, from which file the Documents came to the Certified Copying agency.

3.1.2. There is a tendency to start "Plaint" immediately after writing details of the parties. In today's world of Photocopying, by the Certified copy agency, it is not good to start plaint contents after the Memo of parties. Reason is, the Certified Copying Employees will fold the first page at that place to copy only details of parties, and due to repeated folding, the first page will be torn off.

3.1.3. If separate memo of parties is filed, the first two paras of the Original petition will be written as follows:-

(Para no-1). The Plaintiff (petitioner/ appellant etc) is (write complete name and address), who had filed this petition/ appeal etc... give more details about citizenship etc.

(Para no-2). The complete address of Defendants/ Respondents are given in the Memo of parties, which are not being repeated for the sake of brevity.

(Para no-3). The Defendants are related to the plaintiff in this Suit/ Plaint/ Petition/ Appeal are as follows:- Write here the details of each defendants.

4. While writing about Defendants/ Respondents, there is some new information, which is not written in the Statutes, that is bound to be written in the book about Pleadings. Normally, those who are claiming relief from opposite party, while filing a Plaint is Plaintiff. Unless all the parties join together, the Plaint should not be filed. If filed, that will be dismissed. Thus, people with conflicting interests are Plaintiffs and Defendants. However, some persons with conflicting interest with the defendants, will refuse to join with the Plaintiffs. Reason can be already accepted bribe from the Defendants, or Social embarrassment, or became a Sanyasi etc. Under such circumstances, they will have to be impleaded as "Proforma Defendant/ respondent". Thus now you have two type of Defendants: Proforma and contesting.

4.1. Under such circumstances, the Plaintiff need not file Complete Court Fees for the Cause of Action. He need to file only for his own share: That is, if there is cause of action having value of Rs.ten thousands, and there are ten persons with equal share, who can be plaintiffs; and 9 persons had joined with the defendant, they cannot fool the single person. The only thing is, he will have to pay one-tenth of the original Court fees and make his 9 traitors the "proforma defendants", along with contesting defendants.

4.2. If the Limitation Act will permit, any of those 9 "Proforma defendants" also can pay requisite Court Fees in their Written Statement, and pray for similar "Decree". There are cases, in which Plaintiff and one of the Defendant will engage one Advocate.

4.3. When the Plaint or Appeal is to be filed:- This point have nothing to do with "Pleadings", but to know the Law, this para is to be written. Normally, once a Plaint is filed, the Defendants can file "Counter-claim", and the Proforma Defendants can file requisite Court fees and pray for a Decree in their favour also. However, the question is, who will first go to the Court. Under such circumstances, the person who is Clever, will file his Plaint or Appeal on the last day of the Limitation, so that other party's rights will be lapsed.

4.4. PLEADINGS important ADVICE:- It should be told immediately after the previous advice. The Section 18 of the Limitation Act, 1963; states that, if there is Acknowledgement in writing, the Limitation period will be extended till that date. Thus, if a Client want to file his Plaint/ Appeal, on the last date; the person who is drafting the Plaint/ Appeal should read a lot of Case law under this Section, prior to drafting, so that, no averments/ allegations should be made in the body of the Pleading which will look like an Acknowledgement.

5. Now the details of "Defendants" is written. After that the next point to write is, "FACTS". In that, there can be various paragraphs and sub-paragraphs. Various Complete Pleadings, which are not skeleton, are given in this Book, from which a

General Idea can be obtained about how to write Facts. It is same for Plaint and Written Statement etc. While writing Facts, please remember the following:-

5.1. Hear-say is not an evidence: Kindly read Section 60 of the Indian Evidence Act, 1872. While searching in a Software in a Legal programme, it may be written as “hearsay” or “hear-say”. Thus, never rely on “hear-say” witnesses to prove your case. As an Illustration, Mr.A files a Suit saying: “I had been told by persons who are unknown to me that, Ministry of xyz of the Government of India had created loss to me”, in a Civil Suit, the Notice will be Issued, but even if Defendant will not defend, the Plaint will be dismissed after recording evidence. If the same allegation will be made in a Writ Petition, the High Court/ Supreme Court will dismiss that in limine. The present trend is to impose heavy costs, whether the defendant is Government or private party. Thus, while writing FACTS, please be sure, not to rely on any hear-say allegations.

5.1.1. There is an exception to above Law. That is, Circumstantial evidence. If there is strong chain of circumstantial evidence, even without an eye-witness or original document, the cases can be won. Rules about circumstantial evidence should be read from other books and in a Pleadings book, that need not be written.

5.1.2. It is the Quality of evidence which should be considered and not quantity. That should be read from the Section 134 of the Indian Evidence Act, 1872. It can also be studied from the “heading” named “appreciation of evidence” from the Legal Judgements Digests.

5.2. With the help of all these details, now FACTS are to be written. After writing Facts, please read that many times, to ensure correct mention of following details:- (i) Each witness's name should be correctly written about each Facts. It cannot be written in one-stretch. During each revision of the pleadings, it will be possible to write the correct name of the witness who will testify the alleged Facts. (ii) Each documents which had been prepared in the course of happening of the Facts should be written at the correct place. (iii) Please remember that, unless it is written in the body of the pleadings, no evidence can be led. And no document can be produced. More about Documentary evidence is discussed in a separate chapter of this book.

6. Preparation of List of Witnesses and List of Documents:- during revising the written Facts, these Lists should be prepared. It will help in inclusion of each persons and documents.

7. Code of Civil Procedure, 1908 Order 6, Rule 2; effect of:- Now a Legal Provision will stand up in front of you. That is: “Pleading to state material facts and not evidence”. What is the meaning of this Law and incorporation of names of witnesses and documents in the body of the Facts. The Answer is very simple. When other provisions of Code of Civil Procedure, 1908 was amended during 1999 and 2002, the Legislature forgot to explain this Rule. Examples are given as follows:- 'Government vehicle hit my Cycle' alone is not sufficient for winning the suit, being who will prove this fact is a Blank Cheque kept with the Plaintiff, which the Defendant will not permit. What should be written is 'In the presence of Witnesses....., the Government vehicle hit my Cycle'; OR 'Government vehicle hit my Cycle, which can be proved through the circumstantial evidence as follows.....,

for which ... number of photographs were taken'.

7.1. Now the difference between Civil Suit and Writ Petition can be narrated in this point as follows. In the Writ Petition, the following should be written: 'In the presence of Witnesses...., the Government vehicle hit my Cycle, Statements/ Affidavits of those witnesses are enclosed herewith and marked as Annexure P-1 to ...'; OR 'Government vehicle hit my Cycle, which can be proved through the circumstantial evidence as follows...., for which ... number of photographs were taken, those photographs are enclosed herewith and marked as Annexure P-1 to ...'. If such witnesses are not willing to file any Affidavits, they should be made Respondents in the Writ petition, and that should be written in the above para. In a Civil Suit, separate Summons for Witnesses are issued, thus no need to make them Defendants. Here the word "evidence" means, it is the duty of the Civil or Criminal Court, exercising Original Jurisdiction, to decide about admissibility of each evidence, and identify them accordingly. However, in the Writ Courts, there is no procedure to record evidence, thus they should be identified by the Petitioner/ respondent himself. In both the courts, whether quality of the evidence is sufficient to prove the alleged fact is the decision of the Judge and Judicial opinion subject to variation.

7.2. The impact of Order 6, Rule 2 Code of Civil Procedure, 1908 is very simple. Do not forgot to write every Witness or Documents' name. Do not forget to give a copy of those documents also to the Defendants. However, whether that is sufficient to win your case can be decided only when recording of evidence in the case. In that case, the drafting of Writ Petitions or Appeals and Plaint/Suit/ criminal Complaint is one and same.

8. GROUNDS:- After writing the FACTS, the next point to consider is, whether any Cause of Action arise against the Defendants. To know more about this, please read from Order 7, Rule 11 of the Code of Civil Procedure, 1908. In that, 6 reasons are given about why a Plaint can be dismissed without even filing Written Statement. Even after filing WS, an Application can be moved under this Rule to get the Plaint dismissed without oral and documentary evidence. While filing Appeals and Writ Petitions, it is very easy, because "Grounds" can be at the option of the Appellant/ Petitioner. However, in case of a Plaint/ Suit/ criminal complaint, after writing FACTS, a few essential averments (which will be explained in forthcoming paras) to be written, and thereafter Prayer.

8.1. What is a "Ground" is explained quoting from the following words of a Reputed Book:- "the concept of cause of action has a legal aspect also. A person suing in Court may be able to establish all facts he has in mind to seek relief. But if those facts themselves do not give rise to a legal right, then even on the established facts, no ground for relief arises. This situation is also some times described as the plaintiff having 'no cause of action'... Here, the suit will fail, not because the law does not recognize a right in favour of the plaintiff even if the facts are proved. There must be a legally recognised right, derived from some source or other, which the plaintiff must establish before he can succeed in Court". Quoted from the Question 9 of the Book: Civil Court Procedure in India", written by PD Mathew and PM Bakshi, published by Indian Social Institute, 10, Institutional Area, Lodhi Road, New Delhi-3.

8.2. The same authors had written book about Criminal Procedure also, published by same publisher, in that book the Author could not find the words “cause of action” it means, the same definition applies to criminal proceedings also.

8.3. Few of the Specimen of “Grounds” are written at the separate chapter of this book.

8.4. Whether you are filing Writ petition or Complaint, it will be appropriate to write the “Grounds” immediately after preparing the Facts, and preserve separately in the File. Now you know, whether you are likely to win.

9. CATHARSIS (This term is not meant to be written in Pleadings): To repeat, now you have all your witnesses and evidence in your memory and written paper, and also your legal rights in the form of Cause of action or Grounds. If you are not having a good case, please stop the PLEADINGS of this Case. In case of an Advocate, it is the time to give CONSULTATION to his client, but in India, the Private Clients do not give consultation fees, thus no such things are given. For the Plaintiffs and Defendants appearing in person, there is benefit of doing this work, up to this stage, being that will be a Catharsis Psychological exercise, to utilise the extra energy built up in your body, due to the “fight or flight” hormones.

9.1. NOT FINDING GROUNDS TO GET RELIEF; need not be completely discouraged to file a Litigation. According to Gandhiji, it is good to take a Risk, even in the absence of Grounds to get relief. At his above quoted book, page 45, the following may be read:- “Preparation for the case. Para 6. I recalled late Mr. Pincutt’s advice – facts are three-fourths of the law. At a later date it was amply borne out by that famous barrister of South Africa, the late Mr. Leonard. In a certain case in my charge I saw that, though justice was on the side of my client, the law seemed to be against him. In despair I approached Mr. Leonard for help. He also felt that the facts of the case were very strong. He exclaimed, Gandhi, I have learnt one thing, and it is this, that if we take care of the facts of a case, the law will take care of itself”. “Facts means truth, and once we adhere to truth, the law comes to our aid naturally”.

9.2. Writing up to this much, even if there is Grounds, may some times persuade, not to file any case. That is also Psychology. In India, the present trend, after breaking up of “Joint Families” is of “Emotional Black Mail”. In the internet, there is a definition given to this word, which is the name of a book itself. “when the people in your life use fear, obligation and guilt to manipulate you”. Thoroughly study the Pleadings till now, to find out, whether any of the Witness can become an Emotional Blackmailer and what is the total loss, if he can be neglected. To quote from the para 82 of the K.M.Nanavati Versus State of Maharashtra, 1962 AIR(SC) 605 : 1961 Legal Eagle(Cri) 360: `It is an indisputable fact, that gross insults by word or gesture have as great tendency to move many persons to violent passion as dangerous or painful bodily injuries ; nor does it appear to us that passion excited by insult is entitled to less indulgence than passion excited by pain. On the contrary, the circumstance that a man resents an insult more than a wound is anything but a proof that he is a man of peculiarly bad heart'; if one of your Witness can sufficiently black-mail you, so that you will get grave and sudden provocation to hurt him; it is better, even after having Facts and Grounds,

do not file the Case, being Witness to prove the case may become a Parasite upon you. In case of Joint Families, even-though the Head of the families may be a Bad man, but there used to be large number of Cousin Brothers and Sisters to each man. They can help you by engaging the Blackmailer, to not to talk to you. Now, each one of us is residing in a Flat, or different Rooms of ancestral property. There is no-one to protect us. Thus, if we turn to violent passion because of Blackmailer's dirty dialogues, the loss we suffer will be more than the Cause of action of any case. This point is referred to at para 17, infra.

10. After the Grounds, whether written in the Plaint or only noted in the file; the next point to write is, Whether there is any Legal Ground to deny the relief.

Examples can be obtained from Section 23 of the Hindu Marriage Act. In that, following should be written:

That the Plaintiff is not taking advantage of his or her own wrong or disability for the purpose of relief.

That the Plaintiff has not in any manner been accessory to or connived at or condoned the act or acts complained of.

That the Plaintiff has not condoned the cruelty/ has not compromised the cause of action with the defendants.

That the Plaintiff has not applied any force, fraud or undue influence, upon the defendants, to get the cause of action.

That the Plaintiff has not colluded with the defendants to file this Plaint.

That the Plaintiff is not a puppet plaintiff.

That the Plaintiff do not have any ulterior motive to file this litigation.

That there is no other legal bar to deny relief to the Plaintiff.

10.1. Hindu Marriage Act is a special legislation, which have these guide-lines in the Act itself. However, all these Legal bars to relief are available to all the Litigations. Each allegation made in the Plaint is addressed to the Opposite party, which have the duty to answer. If these things will be written at the first instance itself, the defendants will loose a few Grounds to "Amend" the Written Statements, so as to delay the justice. Any Facts reflecting/ emanating from these Grounds cannot be pleaded to amend pleadings at a later date.

11. Allegations with Procedural requirements:- They are: That this Hon'ble Court have Territorial jurisdiction because:....., That this Hon'ble Court have subject-matter jurisdiction because:....., That adequate Court Fees stamp have been paid, etc.

12. PRE-SUIT NOTICE:- Generally without an efforts for out-of Court settlement, no Case can be filed. In case if the Government or Railways is the Defendant, Notice under Section 80 Code of Civil Procedure, 1908 should have been issued and waited for two months for reply, unless the Cause is emergent in nature.

Under certain legislations, like Rent Control Act, Cheque Bouncing Negotiable Instruments Act etc, the Pre-suit notice is compulsory. In other cases, even for Private Parties, unless the efforts of Compromise prior to filing Suit are not narrated and proved, the Case will be dismissed saying: "Plaintiff had been too hurry to file the Suit".

12.1. It is not that, issuing of the said Pre-Suit notice is harmless. Normally that result in "Declaration Suits". One such suit under copyright and trademark Act is

given as a specimen in this book. Other similar suits are:- Suit for injunction for not to evict, Private criminal Complaint for committing theft of the Cheque etc.

13. NON FILING PARA:- It is unavoidable to write the status of Litigations till now. Following are the allegations made at this place:-

That no Suit or Writ Petition for same relief had been filed by the plaintiff/ petitioner upon the defendants either before this Hon'ble Court or before any other Hon'ble Court or before High Court or supreme Court.

That in the past the Suit No.... of ... year (or writ petition number) had been filed to get same relief, which was dismissed as premature (or dismissed as withdrawn etc), thus there is no resjudicata or constructive resjudicata to file this suit.

14. Prayers:- The Prayers is to be written here. In the specimen pleadings, a large number of prayers are written to use as a specimen.

15. Verification, Affidavit etc:- In Civil Suits, it is essential to make proper verification, affidavit etc. In the criminal complaint, no verification is necessary. The reason for this difference is, in the Civil suit, the Notice or Summons is issued on the same day, if adequate Court Fees is paid. However, in the criminal cases, the Magistrate is duty bound to record the evidence of the Complainant and his witnesses, on Oath/ Affirmation, then only the Summons issued to the Accused.

16. List of Witnesses, List of documents etc:- It is common for all type of litigations.

17. Miscellaneous/ Interlocutory Applications:- This point is relevant to para 9.1., supra. In the Main case, it will be required that, various miscellaneous applications should be filed. One of that is Summons to Witnesses or Summons to produce documents. The elementary rule is, if it is already written in the body of the Main Case and in the List filed, the party (Plaintiff/ Respondent) can bring the person himself. However, if there is a Quarrelsome neighbour or relative who will not come on your request, you can pray to Court to get a summons for him. The same summons can be got issued to the blackmailer witness also. When this Application is filed, the Court will write, how much Diet Money should be deposited. That should be deposited at another Official's chair, who will issue Receipt.

17.1. SEPARATE APPLICATION FOR EACH WITNESSES:- When the witness had appeared for testifying, the Court in which he had appeared will issue a Certificate, which should be surrendered to the Official responsible to disburse Diet Money. If separate Applications will be filed for each witness, separate account will be maintained. For more than one witness if single Application is made and Diet Money deposited, and for only one witness if that is completely withdrawn, in future the Court will not issue Summons to other witnesses, unless Diet money is deposited once more.

17.2. To issue Summons to the Defendant, the Process Fee Form should be filed. In the same manner, to issue summons to the Witnesses, or to produce documents also same Process Fee Form should be filed.

17.3. Another alternative:- The Court can record that, "diet money will be paid on the spot". That is not a good idea. Unless Diet money is paid, the Evidence

testified will not be read in evidence. If Government Charges is Rs.50/-, on the face it is an embarrassment to offer even Rs.5 lakhs to a blackmailer witness. He will not agree for anything less than 50% of the Cause of Action. Separately he will prefer to collect 50% from the plaintiffs and defendants both. Consequence will be, he will get more than his Governmental right, even then he will not stop praising himself.

17.4. HOSTILE WITNESS:- If an emotional blackmailer witness will refuse to “remember” anything, being the party had not contacted him to remind him (or if one of the witness is threatened or purchased by the opposite party), he can be declared Hostile and he can be cross examined, by the same party who had called him, with the permission of the Court.

17.4.1. In the previous para, the Author had written two different category of Hostile witnesses. In this, if a particular person coming is an emotional blackmailer, it will be a good thing to inform the Presiding Officer/ Judge about it, one day earlier. In the Advocate Practice of the Author, with the help of his clients, many a times he had informed the Judges about such persons and it is his personal experience that, even the Judge get a Holy Pleasure to extract truth from such an emotional blackmailer witness.

17.4.2. If your witness is threatened by the Opposite party, the Judge can find from his face and handle him with sympathy. If the witness is already sold off, he will be handled boldly to extract truth. But if the witness is emotional blackmailer, he is a person with unspecified value, and he is handled with a lot of contempt than other two categories of Hostile Witnesses.

17.5. SUMMONS TO PRODUCE DOCUMENTS:- Besides diet money and Process form, it is necessary to file additional photo copies of documents which should be brought by the said witness, along with a list. Theoretically, only the list for each witness to bring document is sufficient. Practically, there will be an adjournment for not bringing the document, or for not even accepting summons.

18. There are a large number of other Misc/ Interlocutory Applications. One more example is, Order-V, rule 20, for the Substituted service. For drafting of each Misc Applications, the simple Drafting technique is:-

(Para 1). Details of the plaint/ Suit/ criminal complaint/ Appeal/ Writ petition.

(Para 2). At which stage the main case is now.

(Para 3). Reasons for moving the present application (that is, at the top the legal provisions should be written and here the description as suitable for the litigation should be written.

(Para 4). Grounds/ legal rights about the Misc Application.

(Para 5). Prayers, Verification, affidavit etc.

19. When denied or refused to be decided by the Court, further course of action:- Normally no Rights will be determined by decision in such Misc Applications, thus no Appeal will be accepted. However, Revision petition for refusal to exercise jurisdiction, Writ petition under Articles 226 and 227 of the Constitution of India etc can be filed, being aggrieved of denial of the said Rights prayed or not deciding the said Application.

20. There are a large number of other Misc/ Interlocutory applications, in each and every proceedings and courts. To know about that, following books to be

studied: (1) Either Code of Civil Procedure, 1908 or Code of Criminal Procedure, 1973. (2) Special Acts like Marriage Acts, Contract Acts, Specific Relief Act, General Clauses Act etc. (3) High Court Rules of the High Court to which the Subordinate Court is subordinate. (4) Administrative Tribunal Act, Armed Forces Tribunal, Debt Recovery Tribunal Act, Consumer Protection Act, MRTP Act, Competition Commission Act, etc.

21. FORUMS TO WHICH THIS FORM AND PROCEDURE IS APPLICABLE:- It is applicable everywhere. Whether you issue Pre-suit Notice, reply to pre-suit notice, file case in a Court where there is specified format, or no specified format, this is the only way to write pleadings. That is, FACTS, GROUNDS AND PRAYER. Misc Applications to get procedural rights.

22. Further readings:- There are a large number of original suits, at each Courts; Main criminal complaints, Misc Civil applications and Misc criminal Applications. The only difference among them is, INGREDIENTS of each section to be quoted, as applicable to the problem faced. Thus, no Specimen can be given for every types of litigations or Misc Applications.

23. The Author recommends, those who are learning Pleadings, should never read "Digests" either for a particular Act or for any year. They should read only Text Books. A few Examples are:-

23.1. Indian Social Institute, address given supra. They have a large number of Legal Education Series books. They are in very simple language and in Hindi and English.

23.2. In the Civil Court Procedure in India Book by the Indian Social Institute, the following is written about the bare act called Code of Civil Procedure, 1908:- "The Code of Civil Procedure appears to be bulky and complex, but it is actually quite simple. To an ordinary reader, the contents of the Code may appear forbidding. To some extent this is due to the structuring of code in two parts...". The Author have the honour to suggest a solution to this problem: book "the Code of Civil Procedure" written by shri MP Tandon and Rajesh Tandon; published by Allahabad Law Agency, 9, University Road, Allahabad. Hon'ble Mr. Justice Brij Mohan Lall had written in his Foreword to this book:- "... In order to achieve this object, the author has departed from the usual practice of commentators in taking sections one by one and commenting on every important word contained therein. His (= Sh.MP Tandon) scheme is to take a group of sections (sic. and connected Orders and Rules) and to reproduce the subject dealt with by them in a narrative form so as to present to the reader a complete and intelligible picture of the procedure contained therein.....". There are similar quality Text books for other Acts also. If they are studied, automatically the Drafting skill will come in the mind.

24. However, the only thing required is to write the Truth and only truth, for that, the specimens given in the forthcoming Chapters and Bare Acts alone is sufficient. Prior to filing, it will be beneficial to show the pleading to any Senior typist in the Typing Pool, of the Courts; or to any Court Staff, to get corrections done, so that in future there will be no necessity to do any Amendments of pleading.

25. Criminal Pleadings:- Whether you are drafting a Pvt Crl Complaint to be filed

by the complainant in the Magistrate Court, or Written Statement to be filed by the Accused in any Trial Court; or in any First Appeal, Revision, Second Appeal or SLP, about each and every offence, about each and every accused persons, following things are to be noted in a book, and to be re-produced in the pleadings:

26. INGREDIENTS OF THE OFFENCES:- Whether the aggrieved incidents gives reasons to suspect commissions of any of the offences as required in the Penal Code, NDPS Act, any other Acts or Rules in which the Offence is defined. Mere happening of an incident do not give rise to any offence. For example, many unfortunate ladies die while delivering their first or 2nd child, within 2 years of marriage, or due to accident. It does not mean that, they had died a dowry death or even a Magisterial enquiry will have to be performed.

26.1. There is a mild difference in Criminal Court's Bail Applications, after arrested by the Police, prior to filing of Charge Sheet/ Challan. In that, there is no need to plead the ingredients of the offence. Broadly only two points are to be Plead in the Bail Applications and Appeals: (1) When the Police will file Charge Sheet, the Suspect/ Under-Trial Prisoner/ Anticipatory Bail Applicant; if released on Bail, will appear before the Court to face the Trial; and (2) He will not tamper with Prosecution Witnesses and Evidence. At this Point, please remember following facts about Indian Crl Trials: (i) A large number of Suspects, from all classes and ranks of the society, are taken into Police Custody, tortured to get informations about crimes, and permitted to go back home, being no Cases can be filed against them. (ii) Some of them are produced in the Magistrate Court and send on Judicial Custody to Jails, who will be brought to Magistrate Court once in 2 weeks to extend J/C, and even against them, no Charge Sheets are filed by the Police. A few of them get bail under the Default clause, under section 167(2) of the Criminal Procedure Code, 1973. (iii) Only for a few cases, there is Charge Sheet/ Challan. Under this circumstances, it is not necessary to write even one word about accusations.

26.2. There are a large number of Miscellaneous Applications in the crl courts, examples are: Application to Surrender, Application for Exemption of Complainant or Accused, from personal appearance etc. In a single volume of Pleadings, all such things cannot be listed and given samples.

27. GROUNDS FOR Review/ Revision, 1st Appeal, 2nd Appeal, SLP and Curative Petition (= Appellate Proceedings):- The Grounds or Cause of Action required for Initiating/ filing/ defending the Original Suit/ Pvt Crl Complaint/ Service Matter Writ petition/ any other Proceedings is not sufficient after decision of the First/ Trial Court to continue the proceedings either before the same Court as a Review Petition or Revision/ Appeal/SLP before the Superior Courts. Each such proceedings required additional Cause of Action or Grounds. For example: "Question of Fact", "Question of Law", "Mixed Question of Facts and Law", "Substantial Question of Law", "Substantial Question of Law of Public Importance". This list is endless, being the Special Statutes do use entirely different terms as "Grounds" to admit (= issue Notice to the Opposite Party) Appellate Proceedings. Only if these Grounds are proved, after hearing the other party also, the Appeal or Revision will win. Thus, these Grounds can be detected

only after preparing the "Facts" for the Appellate Proceedings, which included analysis of Impugned order or judgement.

28. While analyzing the Impugned Order, what is the Language to be used. It should be decent and not accusing the Subordinate Court's Judge. In this regard, one example is given in the form of Complete Judgement: please find how Hon'ble Mr. Justice Avadh Behari Rohatgi had dissented from the Judgement of Hon'ble Mr. Justice P. A. Chaudhary. It means, Judicial Opinion subject to variation. In your Appeal or Revision also, without quoting the name of the Hon'ble Judge, but using the words "Learned Single Judge", "Learned Trial Court", "Learned First Appellate Court", "Learned Revisional Court", "Hon'ble Judges of the Division Bench of the Hon'ble High Court"; you will have to write, how the "Judicial Opinion impugned" is liable to be varied. One of the reasons for quoting the complete text of the Judgement of the case 1983 Legal Eagle (Delhi High Court) 296, in this book is to give a Drafting Language Example for similar cases. Please note that, Justice Rohtagi and Justice Chaudhary was having same Rank and Same power. Justice Rohtagi was not hearing any Appeal from the Judgement of Justice Chaudhary, and the Case also was different. However, never write anything like this "Para 73....Whether the wife is a top actress as was Sareetha in the case before the learned judge or an ordinary wife, the marriage in each case has she same legal consequences", being you are going to continue a proceedings and not dissenting from any previous other case's judgement.

29. Even when you, either as an Advocate or as a Party in person, will not make any Personal Grievance against any Judge of the Impugned Order, it does not mean that he is safe. While allowing or dismissing the Appeal or Revision proceedings, the Superior Court's Judge will read the complete Case, which will some times result in a danger of employment to the Judge whose judgement is aggrieved. Example is:- Jiten Bhalla Versus Gaytri Bajaj, (2008) 106 DRJ 651 : (2008) 9 AD(Del) 618. In this at para. 137, the following may kindly be read: "A copy of this judgment be placed before the Inspecting Judges of Sh....., Additional District Judge, for taking appropriate action, against Sh....., Additional District Judge for his improper conduct, in making comments against his successor, which are against the judicial ethics and discipline". It means, the person drafting the pleadings should not attack the Judge, but should attack only the judgement, and whether the Judge deserves any attack will be decided by the Superior Judiciary. In that light, the next para in this book is written, about Letters to High Courts aggrieving Subordinate Court's judgements.

30. LETTERS to the High Court, impugning Subordinate Court decisions:- High Court have the jurisdiction to suo-moto do Revision of the Orders and Judgements of the Subordinate Courts. It have another jurisdiction to take suo-moto cognizance in the form of Writ Petitions. Only for Appeals, the aggrieved party himself should file and conduct. Thus, with the photocopy of orders or judgement about which the grievence is, a letter can be written to the concerned High Court. Even without this letter, there is Revisions, which are reported in the News Papers. High Court is supervising Subordinate Courts, and as a routine reads the Orders and Judgements passed by the Subordinate Courts; when

those orders are found not justified for Jurisdiction, suo-moto issues Notices to both the parties, hear the case and decides. Thus, Revision Petition can be filed through Letters also. While filing an Appeal or Revision, there is Limitation, Certified copy of the impugned order to be filed; or Exemption from filing Certified copy to be asked etc. To write a letter, these rules are not there. If your grievance is found justified, the High Court will call for the original records and proceed.

31. PROFORMA DEFENDANTS:- It is very relevant concept in pleadings. To know the importance, please read Section 16(c) of the Specific Relief Act, 1963; which mandates that, unless the Plaintiff is willing to do his part of the Contract, the Defendant cannot be compelled to do his part. In that circumstances, the following Paragraphs will have to be written in the Plaint/ Suit/ Writ petition:-

‘That the Plaintiff had send Notices by Regd Post on dates..., ... etc to the Defendant saying that, he is willing to make the complete payment, and the Defendant should execute the sale deed and hand over the Possession’.

From the above, it is clear that, the Plaintiff was willing to pay money, which he informed through legally valid documents (= While Plaintiff will testify the evidence in Court, the Regd Post receipts are Exihibits and it’s contents Letters are ‘Mark’, and when the Defendant will testify his evidence, those ‘Mark’ letters will be shown to him and the ‘Exhibit’ numbers will be obtained upon that; and if the Trial Court is not willing to identify them as ‘Exihibit’ Revision Petition to be filed); and the Defendant is at fault. However, let us take another case, where the Plaintiff was expected to take Loan from one of his relatives/ friends to make this purchase; and the Plaintiff had incorporated the said individual as Proforma Defendant No-2; in that case the above Para will be written as follows:-

EXAMPLE : Defendant 2 is willing to give money:-

Proforma Defendant No-2 had written to Contesting Defendant no-1 that, he is willing to do his part of the Contract vide letters dated (Rest all to be re-produced from above specimen para).

However, Relief will be given, only if it can be proved that, as on the date of filing of the Suit, the Def-2 was willing to do his part of the contract. Normally Def-2 will never contest the Case, or will file it’s reply agreeing with the contents of the Plaint.

32. FINAL SUBMISSIONS: There is a large number of “formats” prescribed in various Laws as suggested pleadings before certain Forums. However, such Formats are prepared by Executives working in ministries, who do not have practical knowledge of law in the Courts. Thus, after filing the case, based on above advices, if one such format will happen to be found, there is no need to have tension. Only when a person go with Fraud to the Court, for the Technical reasons his case is dismissed. Otherwise, a pleading drafted on above advice is sufficient at any and every courts.

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CHAPTER-2 : Grounds to be written, theory and specimens.

“GROUNDS” What is and how to write.

1. While explaining Cause of Action, this point is already explained in the previous chapter, which are not repeated here.

1.1. The pleading should contain only facts and not arguments. However, pleadings should contain Grounds also. Now the question is, how to write Grounds. For that the simplest formula is: (1) Take each facts into consideration, (2) Also consider in your mind or on a rough work paper the Prayer you are asking about the said facts; now a question should be asked, just because of there are Facts took place because of mistake of Opposite party, you do not deserve any relief, unless you are able to plead and prove, the loss/ difficulties you will suffer. These losses or difficulties you are going to suffer is to be written as "Grounds".

2. As an example, the word "mental torture" is not applicable to a person who is not capable of understanding pain. It is equal to a mad man, a child and a respectable person who is insulted in a language which he is not able to understand, among people who are strangers to him. In these type of cases, only the "Society" can prosecute the offender, but the Victim may not get any Financial relief.

3. Some Advocates start writing/ alleging "Facts" with the words "That" and "Grounds" with the words "Because"; which is not a universal format. Many Advocates use the word "That", at the place of "facts" and "grounds" both. Similarly, some Advocates give para numbers of "1", "2" etc for Facts and give para numbers of "A", "B" etc or "i", "ii" etc, for "Grounds". The Author recommends to start with "Para 1" for facts and continue same serial for grounds and the Prayer. It is because, each paragraph is a "door number" where the reply of the Respondent should reach. There is no meaning of creating different "Street number and door number" only to create confusion. Even if you are able to prove the facts, unless you will prove the "damages", no relief will be gained. Thus if same serial number is continued, it will give a lot of chain reactions. It will be easy to "cross refer".

4. Standard sentences (which are only a few examples and not complete list) for beginning of the "Grounds" in any pleadings (whether Suit, Writ Petitions, Criminal Complaints, Special Leave Petitions, Appeals etc) are given below. After these words, the "point" which affects the Petitioner/ Complainant/ Appellant should be written. It is up to the person who is drafting, to decide, whether he want to write "Because" or "That".

i). That the Respondent which is a Government Office/ Trial Court/ First Appellate Court/ High Court had erred in law in coming to the conclusion that

ii). That the Respondent which is a Government Office/ Trial Court/ First Appellate Court/ High Court has miserably failed to consider and appreciate that there was considerable delay in the

iii). That the Respondent- Police/ Investigating Agency/ Trial Court/ First Appellate Court/ High Court's view while considering the defence version/ story and evidence led, regarding the injuries of Shri ... is illegal/ erroneous.

iv). That the Respondent- Police/ Investigating Agency/ Trial Court/ First Appellate Court/ High Court failed to consider and appreciate that the testimony of injured witnesses

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