

LAW REFORMS

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The area which requires Law Reform: C.P.C. Order VIII, Rule 1
(Limitations to File a Written Statement)

ABBREVIATIONS USED

C.P.C. – Code of Civil Procedure

W/S – Written Statement

SOP – Standard Operating Procedure

The main agenda for writing about Law Reform is to motivate young minds like ours to come up with suggestions based on various aspects of laws. Experiencing a similar situation as mentioned in my article – whilst interning in court, I decided to come up with my views on Order VIII Rule 1 of C.P.C.

An article on law reform could be helpful to the Legislatures in formulating new laws as well as for the Judiciary to amend those laws. Order VIII Rule 1 is a provision of giving a brief answer to Plaintiff by Defendant in his defence. In a legal sense, the word written statement implies an argument for safeguard. The reformation which I feel necessary is to be made in this particular law has been mentioned in the conclusion paragraph of my article.

As per my view, the provision provided should be added in the existing law while amending Order VIII Rule 1 of C.P.C.

ABSTRACT

An article on the reformation of law means suggesting changes in the existing law. The changes suggested should be in the interest of the people. The existing laws sometimes cannot be completely absolute; hence changes should be made from time to time. This article is about Order VIII Rule 1 of the Code of Civil Procedure, 1908. The law states that a written statement should be filed by the defendant as a reply to the plaintiff, declining all the accusations made by the plaintiff. All the facts stated by the plaintiff whilst filing a lawsuit should be completely denied in the written statement in the defence of the defendant. The facts that are not denied are considered to be admitted facts by the court which can later be used against the defendant in the proceedings of the case. Hence a written statement plays a vital role in every lawsuit. Order VIII Rule 1 of the Code of Civil Procedure mentions the period in which the written statement is to be filed. The maximum duration mentioned in the existing law for filing a written statement is 120 days from the day of receiving the summons by the defendant.

Hence, seeing that filing of the written statement is of utmost importance, the time limit should be extended, and the existing law should be reformed because at times there are certain conditions where the defendant can't proceed with the written statement. Thus, a new clause should be brought into action where the defendant should be given a further extension of time.

The new suggested provision in the article also states that – this extension of a reasonable amount of time to file a written statement should only be given to the defendant when he satisfies the court that the circumstances, he was under were unavoidable.

INTRODUCTION

The Code of Civil Procedure, 1908 is a procedural law identified with the organization of civil procedures in India. Civil cases involve a conflict between people or institutions, primarily over money. A civil suit begins when a person claims that he has been harmed lawfully by the actions of another person or another person's business and asks the court to provide relief by filing a "civil lawsuit". The greater part of the common suits is guided by the much-settled standards of the Code of Civil Procedure.

THE PROCEDURES INVOLVED CONCERNING FILING OF A CIVIL SUIT AND ITS PROCEEDINGS ARE AS FOLLOWS

- Filing of Suit/Plaint by the Plaintiff/Applicant
- Vakalatnama
- Court Fee
- First Hearing and issue of Summons to Defendant/Respondent
- Written Statement
- Replication by Plaintiff
- Filing of Other Documents
- Framing of Issues
- List of Witness/Cross Examinations
- Final Hearing

The Order VIII Rule 1 in the C.P.C. talks about the rules regarding the written statement. In legitimate word reference, the word written statement implies an argument for safeguard. Be that as it may, the articulation 'written statement' has not been characterized in the code and it is a term of explicit meaning customarily implying an answer to the plaintiff. As such, a w/s is the arguing of the litigant wherein he bargains and denies with each material truth asserted by the plaintiff alongside presenting any new realities in support of himself, that take legitimate complaints against the case of the plaintiff.

THE ORDER VIII RULE 1 OF THE CODE OF CIVIL PROCEDURE STATES THAT

(1) The defendant shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

(2) Save as otherwise provided in rule 8A, where the defendant relies on any document (whether or not in his possession or power) in support of his defence or claim for set-off or counter. claim, he shall enter such documents in a list, and shall, -

(a) If a written statement is presented, annex the list to the written statement:

Provided that where the defendant, in his written statement, claims a set-off or makes a counterclaim based on a document in his possession or power, he shall produce it in Court at the time of presentation of the written statement and shall at the same time deliver the document or copy thereof to be filed with the written statement.

(b) if a written statement is not presented, present the list to the Court at the first hearing of the suit.

(3) 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.

(4) If no such list is so annexed or presented, the defendant shall be allowed such a further period for the purpose as the Court may think fit.

(5) A document which ought to be entered in the list referred to in sub-rule (2), and which is not so entered, shall not, without the leave of the Court, be received in evidence on behalf of the defendant at the hearing of the suit.

(6) Nothing in sub-rule (5) shall apply to documents produced for the cross-examination of plaintiff's witnesses or in answer to any case set up by the plaintiff after the filing of the plaint or handed over to a witness merely to refresh his memory.

(7) Where a court grants leave under sub-rule (5), it shall record its reasons for so doing, and no such leave shall be granted unless good cause is shown to the satisfaction of the Court for the non-entry of the document in the list referred to in sub-rule (2).

EXPLANATION TO THE ABOVE-MENTIONED LAW

[1. W/S. — The Defendant must, inside **thirty days** from the date of administration of summons on him, present a composed explanation i.e., a w/s on his protection, to the Plaintiff/Applicant.

Given that where the respondent neglects to document the composed assertion (w/s) inside the said time of thirty days, he will be permitted to submit the same on such another day, as might be indicated by the Court, for reasons to be recorded as a hard copy, yet which will not be later than **ninety days** from the date of administration of summons.]

*[Provided that where the litigant neglects to document the w/s inside the said time of thirty days, he will be permitted to provide the same on such other day, as might be determined by the Court, for reasons to be recorded as a hard copy and on an instalment of such expenses as the Court considers fit, yet which will not be later than **one hundred twenty days** from the date of administration of request and on expiry of one hundred twenty days from the date of administration of summons, the respondent will relinquish the option to document the composed assertion and the Court will not permit the w/s to be taken on record.]

That Order VIII, Rule 1 of the C.P.C. explicitly says Where any gatherings from whom a w/s is needed under rule 1 and he neglects to introduce it inside the time allowed or fixed by the Court, by and large, the Court will articulate judgment against him or make such request according to the suit as it might suspect fit and on the declaration of such judgment, an announcement will be drawn up that no Court will make a decree henceforth to expand the time given under Rule 1 of this Order for filing of w/s.

DEFICIENCIES IN THE ABOVE-MENTIONED LAW

That, it is not always possible to file the w/s within the stipulated time as mentioned in the code of civil procedure. There may come certain obstacles and difficulties for which the limitation to file the w/s must be extended. This extension is essential because the filing of the w/s is the right of the defendant and pronouncing a judgment against the defendant without considering his w/s results in an unconstitutional act by the court. Let us consider an example wherein the defendant instead of filing the written statement has applied for dismissal of the suit filed by the Plaintiff. Under order VII rule 11 of C.P.C.

That the court may take a reasonable amount of time because it needs to call for the say of the Plaintiff to the application, for rejection of lawsuit made by the Plaintiff. That after the say is filed by the plaintiff to the above-mentioned application of the defendant the court may fix a date for arguments on the said application and accordingly decide whether the application should be allowed or rejected. This procedure may consume quite some time for the defendant which possibly could be more than 120 days from the day of receiving of summons. After the decision of this application for rejection filed by the defendant, if the application is rejected and if the defendant has not filed the written statement to the plaintiff, there is a possibility that the court may not entertain his w/s any further and the possibility that the plaintiff also may oppose and refrain the defendant from filing the w/s hereby resulting in pronouncing a judgment against the defendant without considering his written statement and the order will be passed without going into the merits of the case and just based on technical grounds since the due procedure of law was not followed. Also, there may be a possibility that the defendant is unable to procure certain documents which may be essential in submitting the w/s or he might be facing certain health issues or family crisis or is unable to make contact with his advocate due to unavoidable circumstances such as the catastrophic effect of a global pandemic – making him unable to file the w/s in the stipulated period of 120 days.

In this case, as well – the judgment passed by the court will be pronounced against the defendant if there is no sop in force regarding the functioning of the court and also regarding which matters to be taken on board. Therefore, it shall be wrong if in such unavoidable circumstances the court passes a decree solely based on the passing of a deadline and not on the merits of the case. The court also has to hear the other side (*Audi alteram partem*)

Wherefore, to avoid a miscarriage of justice – hence the following suggestions:

SUGGESTIONS FOR LAW REFORM

That in case the defendant is unable to file his written statements within the stipulated time of 120 days there must be a reasonable explanation for the same. The defendant must be allowed to present his reasonable explanation in front of the court and after hearing the defendant and being aware of the fact as to why the defendant was unable to submit his written statements, and if the justification presented is reasonable, the court must grant a reasonable amount of time to the

defendant to file his w/s and if the justification is not reasonable only then the court is to not entertain the w/s after the passing of the deadline.

Hereinafter, if in case there is an application made by the defendant for rejection of a lawsuit filed against him and if the w/s is not filed it should be inferred by the court that the defendant is present in the court and is attending every date. Subsequently, just in case if the application for rejection/dismissal of the lawsuit is rejected, the defendant must be given a reasonable amount of time to file his w/s and proceed with the matter on merits.

Today the entire world is a victim of the pandemic and there is a lockdown that is announced in many territories across the globe. Under such circumstances, there is a possibility that the defendant after receiving the summons is unable to file his w/s within the mentioned period of 120 days. So, under such circumstances, the defendant must be granted the leave to file the w/s even after 120 days from the time of receiving the summons. Thus, this leave granted to the defendant to file the written statement beyond 120 days on reasonable grounds must be specified under Order VIII, Rule 1 of the CPC.

CONCLUSION

It can be observed that the established procedure is limiting the judiciary to go into the merits of the case and is forcing it to jump to conclusions because of some technical errors in the existing law. Since there is this deficiency observed in the law, such law needs to be reformed, and the merits of the case should mandatorily be taken into consideration before passing the necessary judgment. The law can be reformed by amending the existing law with the below-suggested law:

The Order VIII Rule 1 of the CPC should be reformed and a new law stating – the following should be added as an amendment to the existing law

**[Provided that where the defendant fails to file the written statement within the said period of one hundred twenty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing as the court deems fit and on payment of such costs as the Court deems fit, but which shall not be later than additional 30 days from the date where the reason as specified no longer exists and on expiry of the above days

from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.]

REFERENCES

Code of Civil Procedure, 1908



BRILLOPEDIA