PART F. - SETTLEMENT OF ISSUES

1. **Stress on framing correct issues:-** The trial of a suit falls into two broad divisions— the first part leading up to and including the framing of issues and the second, consisting of the hearing of the evidence produced by the parties on those issues and the decision thereof, Issues are material propositions of facts and law, which are in controversy between the parties and the correct decision of a suit naturally depends on the correct determination of these propositions. The utmost care and attention, is therefore, needed in ascertaining the real matters in dispute between the parties and fixing the issues in precise terms. In most cases the main difficulty of the trial is overcome when the correct issues are framed. A few hours spent by the Court at the outset in studying and elucidating the pleadings, may mean a saving of several days, if not weeks, in the later stages of the trial.

2. **Framing of issues by counsel:**- In some Courts, the framing of issues is left to the pleaders for the parties concerned. This practice is illegal and must cease. The Code contemplates that the Presiding Officer of the Court should himself examine the pleadings, get the points in dispute elucidated and frame issues thereon.

3. **Elucidation of pleadings for framing issues**:- The main foundation for the issues is supplied by the pleadings of the parties, *viz.,* the plaint and the written statements. But owing to the ignorance of the parties or other reasons, it is frequently found that the facts are stated neither correctly nor clearly in the pleadings. The Code gives ample powers to the Court to elucidate the pleadings by different methods prescribed in Order X, XI and XII of the Code and in most cases it is essential to do so, before framing the issues.

4. **Elucidation of pleadings for framing issues**:- On the date fixed for the settlement of issues, the Court should, therefore, carefully examine the pleadings of the parties and see whether; allegations of fact made by each party are either admitted or denied by the opposite party, as they ought to be. If any allegations of fact are not so admitted or denied in the pleadings of any party, either expressly or by clear implication, the Court should proceed to question the party or his pleader and record categorically his admission or denial of those allegations (Order X, Rule 1). **{**In a suit for payment of money, before settlement of issues the Court may require the defendant to disclose his assets on Oath, to the extent the defendant is made liable in the suit. Further in the event of disclosure of assets by the defendant, the Court while exercising powers under Section 151 C.P.C. may also direct the revenue or municipal authorities or the Registrar appointed under the Registration Act to make an entry in the record to the effect that alienation, if any of such property shall be subject to the decision of the pending suit.**}**
{Rule 4 amended vide C.S. No. 84 Rules/II.D4 dated 21.11.2022}

5. **Examination of parties**:- Order X, Rule 2, of the Code, empowers the Court at the first or any subsequent hearing to examine any party appearing in person or present in Court or any person, accompanying him, who is able to answer all material questions relating to the suit. This is most valuable provision, and if properly used, results frequently in saving a lot of time. To use it properly, the Court should begin by studying the pleas and recording the admissions and denials of the parties under Order X, Rule 1, as stated above. The Court will then be in a position to ascertain what facts need further elucidation by examination of the parties. The parties should then be examined alternatively on all such points and the process of examination continued until all the matters in conflict and especially matters of fact are clearly brought to a focus. When there are more defendants than one, they should be examined separately so as to avoid any confusion between their respective defences. **{**However, in suits relating to delivery of possession of property, the Court must examine the parties in relation to third party interest in such property.**}**
{Rule 5 amended vide C.S. No. 84 Rules/II.D4 dated 21.11.2022}

6. **Examination on oath:**- From Order XIV, Rule 3, of the Code, it will appear that every allegation of fact made by any person other than a pleader should be on oath or solemn affirmation. Unlike a pleader, a mukhtar is not empowered to state the pleas of a party in a suit.

7. **Personal attendance of parties:-** When a pleader for a party or his agent is unable to state the facts to the satisfaction of the Court, the Court has the power to require the personal attendance of the party concerned (Order X, Rule 4 Civil Procedure

Code). It may also be noted here that the Court can require the personal attendance of the defendant on the date fixed for the framing of issues by an order to that effect in the summons issued to him. (Order V, Rule 3).

8. **Examination should be detailed:-** In examining the parties or their pleaders, the Court should insist on a detailed and accurate statement of facts. A brief or vague oral plea, e. g. that the suit is barred by limitation, or by the rule of *res-judicata,* should not be received without a full statement of the material facts and the provision of law on which the plea is based. Similarly when fraud, collusion, custom, misjoinder, estoppel, etc., is pleaded, the facts on which the pleas are based should be fully elucidated. Any inclination of a party or his pleader to evade straightforward answers or make objections or pleas, which appear to the Court to be frivilous, can be promptly met, when necessary, by an order for a further written statement on payment of costs. The party concerned should also be warned that he will be liable to pay the costs of the opposite party, on that part of the case at any rate, if he failed to substantiate his, allegations.

9. **Personal examination of parties:-** Examination of the parties in person is particularly useful in the case of illiterate litigants. Much hardship to the people will be prevented, if the Presiding officers examine the parties personally and sift the cases thoroughly at the outset.

10. **Amendment of pleadings:-** The examination of the parties frequently discloses that the pleadings in the plaint or written statement are not correctly stated. In such cases, these should be ordered to be amended and the amendment initialed by the party concerned. If any mis-joinder or multifariousness is discovered, the Court should take action to have the defect removed.

Attention is in this connection invited to a recent Punjab Amendment of Order VI Rule 17 of the Code of Civil Procedure. The new sub-rule (2) provides that every application for amendment shall be in writing and shall state the special amendments which are sought to be made, indicating the words or paragraphs to be added, omitted or substituted in the original pleadings.

11. **Forms prescribed for examination of parties**:- In order to ensure due compliance with these instructions as regards the examination of parties, the High Court has prescribed forms on which such examination should be recorded. Appellate Courts should see that the forms prescribed are used and should not fail to take notice of subordinate Courts which neglect to follow the directions here given.

12. **Discovery and inspection etc**.:-

(i) The provisions of Orders XI and XII of the Code with regard to 'discovery and inspection' and 'admissions' are very important for ascertaining precisely the cases of the parties and narrowing down the field of controversy. A proper use of these provisions should save expense and time of the parties and shorten the duration of the trial. The parties should be warned that if they fail to avail themselves of these provisions they will not be allowed costs of proving facts and documents, notice of which could have been given. When hearing evidence the Court should make a note whether the parties have made use of these provisions, and if they have not done so, should ordinarily disallow costs incurred in proving such facts and documents in passing final orders. As these provisions are little understood and are not used as much as they should be, it has been considered necessary to mention them briefly here.

(ii). **Court Can move Suo Motu**.:- Section 30 of the Code authorises the Court when it appears reasonable, to order, *suo motu,* the delivery and answering of interrogatories, the admission of documents and facts and the discovery, inspection, production, etc., of documents or other articles producible as evidence. These powers should be freely exercised in long and intricate cases or where the number of documents relied upon by the parties is large and it may appear that a long time would be taken up in formally proving the facts and the documents. **{**In suits relating to delivery of possession of property, the Court must ask the parties to disclose and produce documents, upon Oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.**}**

{Rule 12(ii) amended vide C.S. No. 84 Rules/II.D4 dated 21.11.2022}

(iii) **Interrogatories:**- Rules 1 and 2 of Order XI deal with discovery by

interrogatories. Leave to deliver interrogatories should be given to such only of the interrogatories as the Court may consider necessary for disposing fairly of the suit or for saving costs. The party to whom interrogatories are delivered shall make answer by affidavit within the time prescribed in Order XI, rule 8 and may therein raise objections as provided in Order XI, rule 6. Interrogatories may also be set aside or struck off by the Court, if these are unreasonable or vexatious or are prolix, oppressive or scandalous (Order XI, Rule 7). The answer to the interrogatories may be objected to only on grounds of insufficiency (Order XI, Rule 10). When a party omits to answer or answers insufficiently, the Court may on the application of the other party, require the former to answer or answer further by affidavit, or by viva voce examination. (Order XI, Rule 11.)

(iv) Discovery of documents:- A party may also move the Court for discovery of documents which are or have been in possession or power of any other party to the suit, and which relate to any matter in question in the suit. The other party shall make answer on affidavit in form No.5, Appendix C to the Code and must make a full and complete disclosure along the lines indicated in this Form (Order XI, Rules 12 and 13). The production of documents can be resisted on three grounds; viz. (i) that these are evidence exclusively of the party's own case or title (ii) that these are privileged and (iii) when the party called upon to produce being a public officer considers that a disclosure would be injurious to public interest. The affidavit shall be treated as conclusive to the existence, possession and the grounds of objection to the production of the document, unless the court is reasonably certain that the objection is misconceived and the document is of such a nature that the party cannot properly make the assertions contained in the affidavit. The Court can also examine the document to decide the claim about privilege. The Court can order the production of the documents at any stage of the trial and a party can serve notice on the other party for the inspection of any of the documents mentioned in the pleadings or the affidavit of the other party (Order XI, rules 14 and 15.) The failure to comply with such order or notice does not justify the striking out of the defence, though the party at fault shall not afterwards be at liberty to put such document in evidence, except with the leave of the Court and on such terms as to costs as the Court thinks fit. Sections 163 and 164 of the Indian Evidence Act may also be read in this connection. The party on whom notice to produce or allow inspection is served, shall within ten days serve a counter notice, stating a time within three days after the delivery thereof offering inspection by the other party at his pleader's office, of such documents as he offers to produce (for forms of notices see No. 7 and 8, Appendix C). Where no such counter notice is given, the Court may on the application of the party and if of the opinion that it is necessary for disposing fairly of the suit or for saving costs make an order for inspection at a time and place fixed by the Court.

(v) Business Books:-In the case of business books the Court may, in the first instance, instead of ordering inspection of original books, order that copies of relevant entries verified to be correct by the affidavit of a person who has seen these books, may be furnished. Such affidavit shall state whether in the original books there are any and what erasures, interlineations and alterations etc. The Court can still order inspection of the original books, and can look up the document to decide a claim regarding privilege.

(vi) Penalty for disobedience of order:- Under rule 21 of Order XI, when a party disobeys valid orders of the court to answer interrogatories or for discovery and inspection of documents he can, on the application of the other party, if a plaintiff have his suit dismissed for want of prosecution, and if a defendant have his defence, if any, struck out by the Court. The Courts should pass orders against a party only as a last resort and when the default is willful. This rule has been interpreted to be applicable only where an order passed under rule 11 had remained uncomplicated with and not where orders under rules 1, 12 and 18 of Order XI were disobeyed.

13. Notice to admit documents or facts:-

(i) Order XII makes provisions for admission of facts and documents. Any party can serve on the other party a notice to admit facts or documents. Rule 3A now enables the Court to call upon any party to admit any document at any stage of the proceeding notwithstanding that no notice to admit documents had been given under rule 2. The failure or neglect of that other party to admit the documents or facts entails only this penalty that the cost of proving the fact or the document has to be borne by that other party, whatever be the final result of the suit. A notice to admit facts should be served at least nine days before the day fixed for hearing ; the other party may then admit the fact

within six days of service of notice otherwise he incurs liability for the costs of proving the fact. (Vide Forms No. 9 to 12 in Appendix C of the Code).

(ii) **Part Judgment on Admissions:**- Where a part of the case is admitted in the pleadings or otherwise, the party entitled may apply to the Court and a judgment or Order can be passed in respect of the part admitted and a decree is to be drawn accordingly.

14. **Form of issues:**- When the pleadings have thus been exhausted and the Court has before it the plaint, pleas, written statements, admissions and denials recorded under Order X, Rule 1, examination of patties recorded under order X, rule 2, and admissions of facts or documents made under Order XII of the Code, it will be in a position to frame correctly the issues upon the points actually in dispute between the parties. Each issues should state in an interrogative form one point in dispute. Every issue should form a single question, and as for as possible issue should not be put in alternative form. In other words, each issue should contain a definite proposition of fact or law which one party avers and the other denies. An issue in the form, so often seen, of a group of confused questions is no issue at all, and is productive of nothing but confusion at the trial. A double or alternative issue generally indicates that the Court does not see clearly on which side or in what manner the true issue arises, and on whom the burden of proof should lie, and an issue in general terms such as "Is the plaintiff entitled to a decree" is meaningless. If there are more defendants than one who make separate answers to the claim, the Court should note against each issue the defendant or defendants between whom and the plaintiff the issue arises.

15. **Burden of proof:**- The burden of proof as to each issue should be carefully determined and the name of the party on whom the burden lies, stated opposite to the issue.

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