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**LECTURE ON LEGAL DRAFTING - ESSENTIALS DELIVERED AT
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The topic for today is Essentials of legal drafting. Drafting comprises of two different sections – Pleadings and Conveyancing. Broadly speaking, Pleadings are your write-ups before the Court in litigation while Conveyancing relate to deeds and documents like Sale Deed, Rent Deed and so on. Due to constraints of time, in this lecture, I shall deal with drafting of Pleadings only.

What is Pleadings and what are the different types of Pleadings:

As I already said, Pleadings are your write-ups before the Court in litigation. Order VI Rule 1 CPC says that Pleadings mean Plaint and Written Statement. In this lecture, I shall deal only with plaints and written statements.

Plaint sets out the facts which give rise to the cause of action and the prayer which you are seeking.

If you are the defendant, you will have to file a written statement which will give a reply to each and every averment made in the plaint and pray for dismissal of the suit. It may also be that you are claiming some set off or making a counter claim against the Plaintiff. Then your reply should also include the set off or counter claim.

Once the defendant gives his version of the case, the Plaintiff will then file his reply or replication to the written statement where he will refute the version of the Defendant.

It is on basis of these written pleadings that points of dispute between the parties can be identified. These points of differences are called issues and then the parties will be called upon to lead evidence on the issues and after evidence is led, to argue before the court on the issues. So the importance of pleadings is to identify the points of dispute between the parties so that these can be adjudged.

Essentials for drafting your pleadings:

1. Know your case:

- i. **Where the case is to be filed** – the court where the case is to be filed will depend on where the territorial and pecuniary jurisdiction as also nature of the dispute.

Territorial jurisdiction is as per sections 16 to 20 of CPC. If the dispute relates to immovable property, you will file suit where the property is located. If the immovable property is situated in jurisdiction of different courts, you are free to choose any of the Courts where the property is located.

In respect of all other suits, you will file the suit either where the defendants or any of the principal defendant resides or works for gain or where the cause of action has arisen.

After determining the territorial jurisdiction, comes the question of pecuniary jurisdiction. Every court has a lower and upper limit of monetary jurisdiction. This is called pecuniary jurisdiction. You may note that pecuniary jurisdiction of courts may vary from State to State. You will go to that court which has pecuniary jurisdiction having regard to the value of your claim or the value of the property that you are claiming.

Let us see an example. Suppose the dispute relates to a house in Delhi. Then Delhi courts will have jurisdiction. But Delhi has High Court and six district courts. If the value of the property is upto Rs. 2 crores, then District Courts will have jurisdiction while if it is more than Rs. 2 crores, High Court will have jurisdiction. So you have to see what is the value of the suit for purposes of jurisdiction. Suppose it is less than Rs. 2 crores, then you have to see in which judicial district the property lies. That will determine which district court will have territorial jurisdiction.

You will also need to ascertain the nature of the claim. If the dispute relates to consumer law, instead of civil court you may approach the consumer courts. There again whether the matter will be dealt with by NCDRC, State Commission or District Forum will depend upon pecuniary jurisdiction. If the dispute relates to corporate matters, you may have to approach the NCLT. If it is against an entity which is State under Article 12 of Constitution, you may

decide to go in for a writ petition before High Court. If it relates to Bank loans etc., you may have to approach DRT. So you must ensure that you are filing before the correct forum.

The different Fora as above, may have different formats. Some have statutorily prescribed proforma for filing. In respect of others, there may be differences in the conventional or prescribed page layout, font, affidavit etc. So when you draft, you must enquire about these local requirements.

- ii. **Know the law:** You must do a thorough research on the statutory law as well as the latest judgments pertaining to your case so that in your pleadings you are able to claim the correct reliefs and do not write something that is contrary to the law laid down. But while it is essential to know the law and while your pleading must be based on the law, the judgment in favour is not required to be set out in the pleading, you can cite it in the arguments.
- iii. **Be very careful on the facts you plead:** Once you submit a fact in writing, you will not be able to resile from it. You must remember that each and every fact you write, you may be called upon to prove it in the trial. That is why you must write only the relevant facts and not a single line more.

iv. **Facts should not contradict:** Ensure that your facts do not contradict each other.

v. **Limitation:** This is a very important aspect. Please remember that Section 5 of Limitation Act which pertains to condonation of delay, does not apply to original pleadings. It applies only to appeals and applications.

In respect of replies also, various Acts specify specific periods of time within which the reply is to be filed. You must strictly conform to the time limits prescribed, or else the reply will not be taken on record.

2. **Pleading must state only facts and not the law:**

The Pleadings must state only facts as they occurred. It should be concise and contain only material facts.

Neither **provisions of law**, nor conclusion of law or judgments should be stated in pleadings. That will come in the oral submissions. The Judge will decide the law based on oral arguments.

Similarly, where there is a **legal presumption** in your favour, it need not be set out in pleadings. For eg. u/s 138 Negotiable Instruments Act, regarding dishonour of cheque, there is a presumption that the cheque was issued for consideration. So you need not plead that cheque was issued to you for

consideration. But if the opposite side pleads that there was no consideration, then you can give details in rebuttal.

But there are some exceptions to this fundamental rule:

- i. **Legal Pleas:** You can take a legal plea in written statement that the suit is barred by limitation or by some legal principle.
- ii. **Custom, usage of trade or Foreign laws:** If you are relying upon some peculiar custom or usage of trade or some foreign law, you must set it out in your pleadings.
- iii. **Misrepresentation, fraud etc. :** Where there is any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary, particulars (with dates and items if necessary) shall be stated in the pleading.
- iv. **Condition precedent:** If there is a condition precedent, you must mention that.

3. **Pleadings must state only facts and not evidence:**

Order VI CPC mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party relies for his claim or defence, but not the evidence by which they are to be proved. That is to say, the Pleadings should be

- (i) concise
- (ii) consist of material facts only and

- (iii) should not contain evidence by which the facts are to be proved.

For eg., if you are relying on an oral agreement, you should only plead that such and such oral agreement was entered into between the parties on such and such date. You should not give a list of persons who were present on that date and witnessed the oral agreement. That will come in evidence. **Facta probanda** is the material fact on which the party relies upon while **Facta probancia** is the evidence by which that fact is to be proved. In your pleading, only facta probanda is to be mentioned.

Further, if you are alleging that the other party has knowledge or notice of something or has malice towards you, you should just state that there exists such knowledge or notice or malice, without setting out the facts from which such knowledge or notice or malice is to be inferred. That is a matter of evidence.

4. **Language:** For good pleadings, always use short sentences and lucid language. When you refer to a party, avoid using names or pronouns such as he, she etc. Refer to them as Plaintiff, defendant No. 1, defendant no. 2 etc. You should use simple but formal legal language in the pleadings.

5. **What is the format of pleadings:**

Where there is a prescribed format for pleadings, you will have to follow the format. Ms. Gunjan Singhla will deal with that aspect in her address.

In general, in every pleading, you will first give the name of the Court in which it is being filed, then the case number, thereafter name of parties. Then you will say that the Plaintiff or defendant, as the case may be, most respectfully submits as under. If it is the plaint, the plaintiff will in the initial paragraphs give details of himself and of the defendant and then set out the facts of the case and finally the prayer.

According to Order 6 of CPC, every pleading will be divided into paragraphs, numbered consecutively and each allegation being, so far as is convenient, contained in a separate paragraph. Further, dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

If you are required to give particulars of any document in the pleading, you should only give a general description. There is no need to extract the clauses in the body of the pleading. All documents you want to rely upon, should be attached to the pleading along with a list of such documents. If the document is with the other side, you should file a list of reliance.

Finally you will set out paras regarding territorial and pecuniary jurisdiction, limitation and court fees and then you will set out the prayer.

At the end there will be a verification. You are required to state which of the paragraphs in your pleading are as per your knowledge and which ones are as per information received and believed to be true. The plaint and written statement are further required to be supported by an affidavit.

Finally to reiterate some points peculiar to drafting written statement

If you are drafting a Written Statement, each and every averment in the Plaint must be specifically dealt with. Bare denial is not sufficient. You need to set out your own case also.

In the beginning of the written statement you should set out preliminary objections, if any, like limitation, jurisdiction etc.

Thereafter, I would personally suggest that you set out preliminary submissions, where you set out your own list of dates and set out a summary of your own case pointwise. This will give a birdseye view of your case and will be beneficial to both you as well as the Judges in understanding your case.

Then you will give a parawise reply to the plaint. Each and every statement in the plaint must be dealt with and either admitted or

denied. Bare denial of an assertion in the plaint is not sufficient, you must also state your case in respect thereof.

If there is a set off or counter claim, you need to plead that.

Thank you and best wishes to you all.

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