

## CHAPTER IV

### INSTITUTION OF THE SUIT

**42. Plaint :-** (1) The plaint and the documents annexed thereto shall be typed, cyclostyled or printed with double spacing between the lines in the English language on durable <sup>1</sup>[Superior quality A4 size paper having not less than 75 GSM with printing on both sides of the paper with Font – Times New Roman or Georgia, Font size 14 with inner margin of 5 cms and outer margin 3 cms.]

- (2) The following documents shall be annexed to the plaint, viz (i) List of documents on which the plaintiff relies and (ii) exhibits or copies of exhibits. If an exhibit is in a language other than English, neither the original nor a copy thereof shall be annexed, but an official translation of such exhibit shall be annexed to the plaint. The pages of the plaint with all its annexures shall be numbered serially. An index shall be prepared of the plaint and its annexures.
- (3) Exhibits annexed to the plaint shall be marked separately and not collectively. Every exhibit shall commence on a new page and shall bear a separate mark in serial order, such as Ex. “A”, Ex. “B” and so on. Reference to the exhibit mark shall be given in the margin of the plaint where the particular annexure is referred to.
- (4) The plaint with its annexures shall be stitched together book wise in the following order, viz. (i) Index, (ii)Plaint, (iii) Vakalatnama, (iv) Memorandum of Registered Address, (v) List of documents on which the plaintiff relies and (vi) Exhibits or copies of exhibits.
- (5) The dates and amounts mentioned in the plaint shall be expressed in figures and sums of moneys in rupees and paise. When Indian dates are given, the corresponding English dates shall also be added.
- (6) The plaint shall be divided into paragraphs numbered consecutively and shall contain the particulars required by Order VII, rules 1 to 8 of the Code of Civil Procedure.
- (7) Every alteration, interlineations and erasure in the plaint shall be authenticated by the initials of the officer before whom it is declared.

**43. Particulars of claim to be annexed to plaint :-** Where the plaintiff seeks to recover a debt or a liquidated sum of money, there shall be annexed to the plaint particulars of the plaintiff’s claim.

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<sup>1</sup> Substituted by notification No. G/Amend/671/2021, dated 6<sup>th</sup> July 2021, See 2021 MGG, Part 4C, Ord.

**44. Complaint to be verified and before whom :-** All complaints shall be verified, within the local jurisdiction, before one of the officers of the Court appointed in that behalf and elsewhere in India before the officer indicated by the Code of Civil Procedure, section 139. The verification shall be in Form No. 3.

*[Case Law: Bharamu Subrao Patil v. Narsingrao Gurunath Patil, AIR 2001 Bom 104, 2001(2) ALLMR 429, 2001(2) Bom.C.R. 126, 2001(1) Bom.L.R. 545, 2001(2) Mah.L.J. 348]*

**45. Complaint to be lodged before presentation: -** A complaint in which leave of the Court is to be applied for shall, except in cases of special urgency, be lodged for examination with the officer attending on the Judge in Chambers before 4.15 p.m. on the day previous to its being presented to the Judge and the plaintiff or his Advocate on record shall attend before the Judge at the time of presentation.

All other complaints shall be lodged with such officer as the Prothonotary and Senior Master may direct.

*[Case Law: Bharamu Subrao Patil v. Narsingrao Gurunath Patil, AIR 2001 Bom 104, 2001(2) ALLMR 429, 2001(2) Bom.C.R. 126, 2001(1) Bom.L.R. 545, 2001(2) Mah.L.J. 348]*

**46. Complaint to be properly stamped :-** The complaint and documents therewith, when so lodged, shall be properly stamped with uncanceled stamps ready for filling.

**47. Endorsement on admission :-** When a complaint is admitted in words "Admitted this day" shall be endorsed thereon and signed by the Prothonotary and Senior Master or by one of his assistants, the words "written statement" being added when such statement is required.

**48. Official title only of Advocate General to appear in suit by or against him. Relators :-** When the Advocate General is a party to a suit in his official capacity, he shall be named and described in the pleadings by his official title only. Before the name of any person shall be used in any suit as relator, such person shall sign a written authority to the Advocate on record for that purpose and such authority shall be filed in the office of the Prothonotary and Senior Master.

**49. Form of appearance/vakalatnama to be filed on behalf of a party :-** (a) Where a party appears in person, he shall file an appearance in Form No. 4.

(b) Where a party appears by Advocate who, under the rules is entitled to act, appear and plead on the Original Side, the Advocate shall file a vakalatnama in Form No. 5.

**50. Address for service:-** (i) Every party to a suit shall, on filing an appearance in person or a vakalatnama, file in the office of the Prothonotary and Senior Master a memorandum in writing giving an address within the local limits of the Court (to be called his

“registered address”) at which service of any notice, summons or other process may be made on him.

(ii) Any notice and other process required to be served on any such party shall be deemed to be duly served and the service shall be deemed to be as effectual as if the notice or process had been served on him personally, if it is left at his registered address for service or sent to him by registered post at such address.

(iii) The registered address shall hold good in all proceedings in the suit and in any appeal in such suit and also for a further period of six years from the date of the final decision, for all purposes including execution.

(iv) A party who desires to change his registered address shall file a fresh memorandum in writing giving his new address and such new address shall then be deemed to be the registered address of the party.

(v) Nothing in this rule shall prevent the Court from directing the service of the notice or other or other process in any manner, if, for any reasons, it thinks fit to do so.

(vi) If a party fails to file the registered address as required by sub-rule (i), the Court may *suo motu* or on the application of any party, reject the plaint if the party in default is the plaintiff or strike out the defence if the party in default is the defendant or make such other order as it thinks fit.

(vii) The provisions of this rule shall, with any necessary modifications, apply to parties to any original petition or matter.

**51. Acceptance of service by Advocate on behalf of client:** - When an Advocate has filed his Vakalatnama for a party in a suit or matter, he shall accept service on behalf of his client, of all processes (including a Chamber Summons, a Notice of Motion and a Summon for Judgment) issued in the suit or matter until he is discharged.

**52. Party represented by Advocate not entitled to act or appear in person :-** When a party is represented by an Advocate, he shall not be entitled to make any application or file any or appear in person, unless the Judge or the Prothonotary and Senior Master, as the case may be, allows him to do so.

**<sup>1</sup>53. Parties in person to attend personally and supply address and postage if necessary information regarding his matter by post at the time of presentation :-** The name, address and description of parties appearing in person and of the person, who had drafted the document filed by such parties, shall be subscribed in the said documents.

Parties appearing in person shall personally attend the Office of the Prothonotary and Senior Master to receive any information they may require:

Provided, however, that at the time of presentation of any Plaint, Memorandum of appeal, application for execution petition, miscellaneous application or any other matter, the party appearing in person shall, at his option, supply sufficient postal stamps for postage and registration charges for addressing communications to his registered address

by the Office when the matter presented by him is for the first time placed on Board for final hearing and disposal.]

1. Substituted by G.N. No G/Amend/3047, dated 18.4.1992, See M.G.G. Pt. IV-Ka, Pg.372.

**54. Rules 42 and 44 to apply to all pleadings etc. :-** The provisions of rules 42 and 44 shall apply, with any necessary modifications to all pleadings, Petitions, Miscellaneous Applications, Affidavits, Notices of Motion, Chamber Summons and all other proceedings that may be taken in a suit or matter, so far as they are applicable.

**55. Petitions to be on Oath:-** All Petitions and Miscellaneous Applications shall be on oath and shall be verified in the manner provided by Order VI, rule 15 of the Code of Civil Procedure for the verification of pleadings.

**56. Forms of appearance or vakalatnama in petitions etc:-** Forms relating to appearance and vakalatnama in suits shall apply, with any necessary modifications, to appearance and vakalatnama in Petitions, Applications and all other matters.

**57. General List of suits: -** All suits shall be entered in the Prothonotary and Senior Master's office in a list called the General List of suits. In such list shall be entered the number and the class of the suit, the names of the plaintiff and the defendant, their respective Advocates, if any, and the day fixed for the hearing.

**58. Prospective List of suits: -** Every fortnight, or sooner if necessary, a list shall be made of suits due for hearing. Such list shall be called the Prospective List of suits, and shall be put up near the Prothonotary and Senior Master's Office.

[Case Law: *Bitesh Hanumantrao Sagar (Deleted)*, (a) *Smt. Shailaja Bitesh Sagar*, (b) *Mrs. Shradha Atwani*, (c) *Miss Hem Bitesh Sagar v. Virginia Anthony Misquitta and Ors.*, 2012(3) ALLMR 805]

**59. Working of Prospective List :-** From the Prospective List shall be taken in their turn suits required for hearing for the Courts.

[Case Law: *Bitesh Hanumantrao Sagar (Deleted)*, (a) *Smt. Shailaja Bitesh Sagar*, (b) *Mrs. Shradha Atwani*, (c) *Miss Hem Bitesh Sagar v. Virginia Anthony Misquitta and Ors.*, 2012(3) ALLMR 805]

**60. Transfer of suit to Stayed List "A" :-** When an order is made referring a suit to arbitration, such suit shall be transferred from the General List of suits to a separate list called "Stayed List 'A'". Such suit shall be restored to the General List of suit after the award is filed.

**61. Transfer of suit to Stayed List "B" :-** (a) A suit in which an order for the issue of a commission for the examination of a witness is made and no definite date for the hearing of the suits is fixed shall be transferred from the General List of suits to a separate list called "Stayed List 'B'". Such suit shall, after the return of the Commission, be restored to the General List of suits.

(b) A suits in which an interim stay of proceedings sine die has been granted shall be transferred from the General List of suits to Stayed List “B” and shall be restored to the General List on the stay being removed.

**62. Removal of a suit for trial to High Court from any Subordinate Court :-** When an order is made by the High Court, Appellate Side, under the Extraordinary Civil Jurisdiction for the removal of a suit from any Subordinate Court, the Registrar, High Court, Appellate Side, shall transfer the papers in such suit, when received, to the Prothonotary and Senior Master, who shall treat the suit as a suit filed on the Original Side and shall enter it in the General List of suits.

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