CHAPTER VII

WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM

88. Time for filing appearance or vakalatnama by the defendant.—(a) In suits where the Written Statement is called for by the Writ of Summons, the defendant shall file an appearance in person or a vakalatnama, as the case may be, within [1][Thirty days] from the service of the Writ of Summons.

(b) In Matrimonial suits the defendant shall file an appearance in person or a vakalatnama, as the case may be, on or before the date fixed for his appearance in Court.

(c) In Summary suits the defendants shall file an appearance in person or a vakalatnama, as the case may be, within ten days from the service of the Writ of Summons.

89. [2][Deleted]

[1]**[90. Judgment for want of written statement.—** The procedure as provided in Order VIII, rule 10 shall be followed for the judgment for want of written statement.]

91. [2][*Deleted*]

92. Written statement by plaintiff.—Where Written Statement is called for from the plaintiff, the Court or the Judge in Chambers will direct when it is to be filed and when to be served upon the defendant.

93. Set-off by defendant.—A defendant in a suit for the recovery of money in addition to his right of pleading a set-off allowed under Order VIII, Rule 6 of the Code of Civil Procedure, may set-off a claim for damages provided it arises out of the same transaction as the transaction in the suit. Such set-off shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment both on the original claim and the cross claim and the plaintiff (if so advised) shall be at liberty to file a Written Statement in answer to the set-

1. Substituted vide Notification No. G / Amend/610/2022, dated-24-03-2022
2. Deleted vide Notification No. G / Amend/610/2022, dated-24-03-2022

off within [1][Thirty days] after service upon him or his Advocate on record of a copy of the defendant's Written Statement.

94. Judge may disallow set-off.—The Judge may on the application of the plaintiff at any stage of the proceedings in a suit, if in the opinion of the Judge such set-off cannot be conveniently disposed of in the pending action or ought not to be allowed, refuse permission to the defendant to avail himself thereof, and require him to file a separate suit in respect thereof.

[1]**[95. Counter-claim by defendant.—** The procedure as provided in Order VIII Rule 13 to 22 (as amended for Bombay) of Code of Civil Procedure shall be followed for Counter-claim by defendant.]

96. Grounds in support of counter-claim to be specifically stated.—Where any defendant seeks to rely upon any ground as supporting a right of counter-claim he shall in his Written Statement state specifically that he does so by way of counter-claim.

97. Title of counter-claim.—Where a defendant by his Written Statement sets up a counter-claim which raises questions between himself and the plaintiff or between himself and the plaintiff along with other persons, he shall add to the title of his Written Statement a further title similar to the title in a plaint, setting forth his own name as plaintiff to the counter-claim and the names of persons against whom the counter-claim is made as defendants to the counter-claim and shall deliver copies of his Written Statement and counter-claim to such of them as are already parties to the suit within the period within which he is required to deliver it to the plaintiff.

98. Claim against person, not party.—Where any such person as in the last preceding rule mentioned is not already a party to the suit, he shall be summoned to appear by being served with a copy of the Written Statement and counter-claim and such service shall be regulated by the same rules as are applicable in respect of the service of a Writ of Summons. Every Written Statement and counter-claim so served shall bear an endorsement at the foot thereof requiring the defendant to the counter-claim to file his appearance in person or a vakalatnama

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and reply to the counter-claim within [1][thirty days] from the service upon him of the Written Statement and counter-claim and notifying that if he fails to do so, he will be liable to have a decree passed against him in his absence. The endorsement shall be in Form No. 15 or to the like effect.

99. Appearance by third parties.—Any person not a defendant to the suit, who is served with a Written Statement and counter-claim as aforesaid, shall appear therein as if he had been served with a Writ of Summons to appear in the suit.

[1]**[100. Reply to counter-claim.—** The rules relating to a written statement by a defendant shall apply to reply to counter-claim**.]**

101. Exclusion of counter-claim.—Where a defendant to the suit sets up a counter-claim, if any defendant to the counter-claim contends that the claim thereby raised ought not to be disposed off by way of counter-claim but that the defendant to the suit should be referred to a separate suit, he may, at any time before the expiry of the time for filing his reply to the counter-claim, apply to the Court or the [1][Judge] for an order that such counter-claim may be excluded from the suit, and the Court or the Judge may, on the hearing of such application, make such order as it or he thinks fit.

102. Discontinuance of suit.—If in any case in which a defendant sets up a counter-claim the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

103. [2]**[*Deleted*]**

104. Judgment for balance.—Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court or the Judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

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105. Payment with denial of liability.—In an action for damages the defendant may at any time after he has filed his appearance in person or a vakalatnama pay into Court a sum of money in satisfaction of the plaintiff's claim with a denial of liability.

Notice of such payment shall be given to the plaintiff. The Notice shall be in Form No. 16 with such variations as the circumstances may require.

106. Mode of withdrawing money paid with denial of liability.—After the money is paid into Court under the last preceding rule, the plaintiff may within seven days of the receipt of the notice of payment into Court apply by Chamber Summons for payment of the said money to him in satisfaction of his claim and the Judge may at the hearing of the summons make such order as to payment of the money and costs as he may think fit.

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