

CHAPTER VIII

THIRD PARTY PROCEDURE

R. 107. Third party notice.—Where in a suit a defendant claims against any person not already a party to the suit (hereinafter called the third party)—

- (a) that he is entitled to contribution or indemnity, or
- (b) that he is entitled to any relief or remedy relating to or connected with the subject matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff, or
- (c) that any question or issue relating to or connected with the subject matter of the suit is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and the third party or between any or either of them,

he may apply to the Judge in Chambers for leave to issue a notice (hereinafter called the “Third Party Notice”) to that effect. The application shall be made by affidavit, stating the nature of the claim made by the defendant and the facts on which proposed Third Party Notice is based and may be made *ex-parte*. The application shall be made within four weeks from the service of the writ of summons upon the defendant.

R. 108. Form and service of notice.—(1) The Third Party Notice shall state the nature of the claim made by the plaintiff against the defendant and the nature and grounds of the claim made by the defendant against the Third Party or the nature and the extent of any relief or remedy claimed by him against the Third Party or the nature of the question or issue sought to be determined and shall be sealed with the seal of the Court. It shall be served on the Third Party according to the rules relating to the service of the writ of summons and shall, unless otherwise ordered, be served within two weeks from the date of the order granting leave to issue the Third Party Notice. A copy of the plaint and a copy of the affidavit of the defendant in support of the Third Party Notice shall be served on the Third Party along with the Third Party Notice. Such Notice shall be in Form No.17 or No.18 with such variations as the circumstances of the case may require.

(2) A copy of the Third Party Notice and the affidavit of the defendant in support of the Third Party Notice shall be furnished to all parties to the suit within two weeks from the date of the order granting leave to issue the Third Party Notice.

R. 109. Effect of service of notice.—The Third Party shall, as from the time of the service upon him of the Notice, be a party to the suit with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.

R. 110. Third party to enter appearance or vakalatnama.—If the third party desires to dispute the plaintiff's claim in the suit as against the defendant on whose behalf the Notice has been issued or his own liability to the defendant, the Third Party shall enter an appearance in person or a vakalatnama in the suit within two weeks from the service of the Notice:

Provided that a person so served and failing to appear within the said period of two weeks may apply to the Judge in Chambers for leave to appear and such leave may be given on such terms, if any, as the Judge may think fit.

R. 111. Consequence of failure to enter appearance or vakalatnama.—If the Third Party does not enter an appearance in person or a Vakalatnama he shall be deemed to admit the claim stated in the Third Party Notice and shall be bound by any judgment or decision in the suit, whether by consent or otherwise, in so far as it is relevant to any claim, question or issue stated in the Notice.

R. 112. Decree when third party makes default in appearance or vakalatnama.—Where the Third Party makes default in entering an appearance in person or a vakalatnama in the suit—

- (1) in cases where the suit is tried and results in favour of the plaintiff, the Judge who tries the suit may, at or after the trial, pass such decree in favour of the defendant against the Third Party as the nature of the case may require :

Provided that execution thereof shall not issue without the leave of the Judge in Chambers until the decree against the defendant has been satisfied, and

- (2) in cases where the suit is decided in the plaintiff's favour, otherwise than by trial, the Judge may, at any time after the decree against the defendant has been satisfied, on the application of the defendant by Notice of Motion pass such decree in favour of the defendant against the Third Party as the nature of the case may require.

R. 113. Third party to file affidavit in reply.—If the Third Party enters an appearance in person or a vakalatnama he shall file within two weeks thereafter an affidavit in reply to the affidavit of the defendant in support of the Third Party Notice, setting out his case in respect of the Third Party Notice and his case, if any, in respect of the plaint.

R. 114. Appearance or vakalatnama of third party.—(1) Where the Third Party enters an appearance in person or a vakalatnama and files his affidavit as required by the last preceding rule, and the suit appears on board for directions before the Judge in Chambers, the Judge may—

(a) **Directions to be given.**—order any claim, question or issue stated in the Third Party Notice to be tried in such manner, before, at or after the trial of the suit, as the Judge may think fit and may, in that event, give the Third Party leave to defend the suit either alone

or jointly with any defendant, upon such terms as he may think just, or to appear at the trial and take such part therein as he may think just and generally may make such orders and give such directions as to the Judge may appear proper for having the questions and the right and liabilities of the parties most conveniently determined and enforced and as to the extent to which the Third Party shall be bound or made liable by any decree in the suit, or

(b) dismiss the Third Party notice.

2) Any order made or direction given under this rule may be varied or rescinded by the Court or the Judge in Chambers at any time before the disposal of the suit.

R. 115. Defendant to take out chamber summons for directions in certain cases.—Where for any reason it is not possible for the Court to give directions on the Third Party Notice at the time when the suit appears on the board for directions, the defendant issuing the Third Party Notice shall, within two weeks, after the filing of the affidavit in reply by the Third Party, apply for directions by Chamber Summons addressed to the Third Party and to all parties to the suit. Upon the hearing of such Summons, the Judge may pass such orders and give such directions as are mentioned in the last preceding rule.

R. 116. Costs.—The Court or the Judge in Chambers may decide all questions of costs as between a Third Party and the other parties to the suit, and may order any one or more to pay the costs of any other, or others, or give such direction as to costs as the justice of the case may require.

R. 117. Setting aside third party proceedings.—Proceedings on a Third Party Notice may, at any stage of the proceedings, be set aside by the Court or the Judge in Chambers.

R. 118. Right of the third party and of each successive third party to apply for third party notice against other persons.—(1) Where the Third Party makes against any person not already a party to the suit (to be called “the second ‘third party’”) such a claim as is mentioned in rule 107 he may by leave of the Judge in Chambers issue a Third Party Notice to that effect.

(2) Where the second “Third Party” in his turn makes such a claim as is mentioned in rule 107 against any person not already a party to the suit (to be called “the third ‘Third Party’”) or where each successive Third Party in his turn makes such a claim against any person not already a party to the suit, such second “Third Party” or any successive Third Party in his turn makes such a claim against any person not already a party to the suit, such second “Third Party” or any successive third party may, by leave of the Judge in Chambers issue a Third Party Notice to that effect.

(3) The provisions contained in the preceding rules as to the Third Party procedure shall, with necessary modifications, apply to all cases where Third Party Notices have been issued, whether at the instance of the Third Party or any successive Third Party.

R. 119. Right of defendant to issue third party notice against co-defendant.—

(1) Where a defendant makes against a co-defendant such a claim as is mentioned in rule 107 he may, without leave of the Judge in Chambers, issue and serve on such co-defendant within six weeks from the service of the Writ of Summons upon him (the defendant making the claim), a notice stating the nature and grounds of such claim and shall at the same time file an affidavit in support of such claim and furnish copies thereof to all parties in the suit.

(2) The provisions contained in the preceding rules regarding Third Party procedure shall, with necessary modifications, apply to cases where a defendant has issued such notice against a co-defendant, but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the suit.

R. 120. Third Party proceedings in a counter-claim.—Where in any suit a counter-claim is made by a defendant, the provisions contained in the preceding rules regarding Third Party procedure shall, with any necessary modifications, apply in relation to the counter-claim as if the subject-matter of the counter-claim were the subject matter of the suit, and as if the person making the counter-claim were the plaintiff and the person against whom it is made a defendant.

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