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## Amendment of Pleadings vs Additional Written Statement

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*The article aims to study the differentiation between the Amendment of pleading and Additional Written Statement. It also enumerated the various principles in the Civil Procedure Code (CPC), 1908, and ways for Amendment of Pleading and the Additional Written Statement. This article also deals to know the provisions allowed or refused in pre-trial and post-trial scenarios, imposition and award of cost, and guided generous methodology to Order VI Rule 18.*

**Keywords:** *pleadings, written statements, orders, rules, set-off, counter-claim, trial.*

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### INTRODUCTION

“Rule 17 of Order VI CPC” provides for the revision of the plea. Pleading means “plaint” or “written statement”.<sup>1</sup> Pleadings are a declaration in writing conveyed by each litigant interchangeably to his adversary, stating what his arguments will be at the hearing, and providing all such minutiae as his opponent desires to know to prepare his response.

### DIFFERENT KINDS OF AMENDMENT OF PLEADINGS

In six different ways amendments to pleadings can be made:

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<sup>1</sup> Code of Civil Procedure 1908, or 6 r 1

- “General Power to amend”<sup>2</sup> – the revision of clerical and arithmetical errors in verdicts, decrees, and commands.
- Authority to alter ruling or order where the entreaty is precipitously terminated<sup>3</sup> – the revision of events in a suit, whether submitted by the litigants or not, to determine the real query or concern between the litigants.
- The court may remove or add litigants<sup>4</sup> – striking out or adding parties.
- Process where one of several litigants dies and right to sue endures;<sup>5</sup> Process in case of demise of one of several plaintiffs or sole plaintiffs<sup>6</sup> – adding legal representatives of the deceased party.
- “Striking out pleadings”<sup>7</sup> – amending your opponent's pleading: compulsory amendment.
- “Amendment of pleadings”<sup>8</sup> – amending your pleading: voluntary amendment

The plaintiff, if amended, to answer the arguments outlined in the amended plaintiff, the defendant gets a right to amend his written statement. A written statement is a legal document stating the cause of action and other mandatory particulars that supports the plaintiff's claim. It is filed by the plaintiff stating its facts and relief to be claimed by the plaintiff.” Whereas, the defendant shall, present a written statement of his defence. Which is not allowed after 30 days.<sup>9</sup>

As held by the Honourable Supreme Court in various cases the amendment or additional written statement can be considered if they are necessary for the final disposal of the dispute before them. In the case of *Sumtibai & Ors v Paras Finance Co. Mankanwar W/O Parasmal Chordia (D) & Ors*<sup>10</sup>, Honourable Supreme Court of India, Justice Marandey Katju, held that “For the

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<sup>2</sup> Code of Civil Procedure 1908, s 152

<sup>3</sup> Code of Civil Procedure 1908, s 153A

<sup>4</sup> Code of Civil Procedure 1908, or 1 r 10(2)

<sup>5</sup> Code of Civil Procedure 1908, or 22 r 2

<sup>6</sup> Code of Civil Procedure 1908, or 22 r 3

<sup>7</sup> Code of Civil Procedure 1908, or 6 r 16

<sup>8</sup> Code of Civil Procedure 1908, or 6 r 17

<sup>9</sup> Code of Civil Procedure 1908, or 8 r 9

<sup>10</sup> *Sumtibai & Ors v Paras Finance Co. Mankanwar W/O Parasmal Chordia (D) & Ors Appeal (Civil) 117/2001*

reasons aforementioned in its judgement, the impugned orders of the High Court dated 7.1.2000 as well as the trial Court dated 6.8.1997, is set aside.

The appellants shall be allowed to file additional written statements and thereafter the suit should proceed expeditiously by law.” A written statement<sup>11</sup> is a reply to the plaint, in which the defendant deny or admit every allegation or fact included in the plaint. Filing the written statement is the right of the defendant but the additional written statement is based on the discretion of the court. However, once the written statement is filed the defendant cannot file a counterclaim or set-off, unless it is an additional written statement.

### **MEANING, OBJECT, AND ESSENTIALS OF ADDITIONAL WRITTEN STATEMENT**

**The objective of the supplementary inscribed declaration:** The expression “additional written statement” has not been defined in “the Civil Procedure Code, 1908”.

**The object of Additional Written Statement:** “Rule 9 of Order VIII” was deleted by “the Civil Procedure Code (Amendment) Act, 1999 (46 of 1999)”. Consequently, reinstated by the next “CPC (Amendment) Act, 2002 (22 of 2002)” with a fixed number of days. Restoration of the Rule is with a view that succeeding pleadings shall be continued to be filed and the court shall fix a time, limited to thirty days, for offering the same. The only difference between the omitted rule and the restored rule in Rule 9 of Order VIII is in the omitted rule time is fixed at the discretion of the Court while in the restored rule fixed 30 days is provided for offering a “written statement” or “additional written statement”. The law shall exercise its power in special cases and for reasons logged in writing and cannot be exercised as a matter of right by the defendant.

**Essentials of Additional Written Statement:** “Additional Written Statement” is granted unless the party filing for amendment is:

- acting malafide; or
- by the party's own mistake if any injury is inflicted on the adversary which cannot be recompensed by costs; or

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<sup>11</sup> Code of Civil Procedure 1908, or 8 r 1

- else, whether the original deletion ascended from negligence, carelessness, or accidental error, the flaw may be allowed to be resolved if no prejudice is made to the opponent.

## LEGALITY OF ADDITIONAL WRITTEN STATEMENT

### Order VIII Rule 9 CPC pre-amended:<sup>12</sup>

The written statement, or Additional written statement, is not allowed after a fixed time for offering the same.

### Order VIII Rule 9 CPC amended:<sup>13</sup> Subsequent pleadings

## Drill of Civil Rules

### Rule 28 - Revision in pleadings:

The Presiding Officer shall reject the submission for revision made under “Order-I Rule 10, Order VI Rule 17 or Order XXII of the Code”, consisting of a plea for all significant revisions if it is not by the law or these rules. With the permission of the court, verbal corrections are made in pleadings.

### Rule 29 - Legal Representatives on record:

- (a) When a litigant passes away pending legal suit in court.
- (b) The attorney of the departed litigant is going to be entered and numbered consecutively when the successors of a departed party are replaced for him.

In the year 1976, there were no amendments. To escape delay and to confirm expeditious disposal of suits, in the year 1999, the legislature, on the recommendation of Justice Malimath Committee deleted Rule 17 from Order VI of CPC<sup>14</sup>. Later in the year 2002, due to the objections

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<sup>12</sup> Code of Civil Procedure 1908, or 8 r 9

<sup>13</sup> *Ibid*

<sup>14</sup> Code of Civil Procedure 1908, or 6 r 17

of lawyers and the public, the Legislature re-established the same with the outline and inset of the stipulation to “Rule 17”<sup>15</sup>:

Rule 17 was considered and included by the Apex Court in *Pirgonda Hongonda Patil v Kalgonda Shidgonda Patil & Ors*<sup>16</sup> and directed not to bar the justice simply on the technicality of the plea. The objective of “Rule 17” is to curtail the lawsuit, deferment, and elude the array of suits.

**DIFFERENTIATION BETWEEN AMENDMENT OF PLEADINGS AND ADDITIONAL WRITTEN STATEMENT**

Amendment of Pleadings	Additional Written Statement
“Order VI Rule 17 CPC”	“Order VIII Rule 9 CPC”
Pleading to state material facts and not evidence	A defence statement comprising all material facts and other details against the plaint
The “Pleading” shall mean a “plaint” or “written statement”	The additional written statement shall mean a statement filed after the written statement
Plaintiff and/or defendant can amend their respective pleadings	An additional written statement can be filed by the defendant
Revision of pleadings is not allowed after the hearing has begun	An additional written statement can be filed within the time allotted by the court limited to thirty days
The amendment is not a right nor repudiated arbitrarily by the Court.	Presentation of Additional Written Statement is based on the discretion of the Court as thinks fit.

<sup>15</sup> Code of Civil Procedure 1908, or 6 r 17

<sup>16</sup> *Pirgonda Hongonda Patil v Kalgonda Shidgonda Patil & Ors* (1957) SC 363 595

**The Cardinal test:** to decide an application for amendment.

**The necessity of amendment:** To decide the “real point in dispute” between the parties, the revision should be permitted otherwise should not be allowed.

**Can the amendment be allowed?:** In the case of *Pirgonda Hongonda Patil vs Kalgonda Shidgonda Patil and Others*<sup>17</sup>, NO alteration is permitted which causes injustice to the opponent. It is established law that the amendment can be made without doing injustice to the opponent.

### **PRINCIPLES OF AMENDMENT OF PLEADINGS; EXCLUSION OF COUNTER-CLAIM**

Doctrines to be followed in the applications for amendment of pleadings:

- To promote justice and not to defeat.
- To decide the real dispute between the litigants and not to reprimand them based on their errors, carelessness, or inadequacies.
- Authoritative supremacy must be exercised and administered by legal contemplations.
- The rule of change is a rule of righteousness, even-handedness, and good ethics. The power of change will be exercised for doing full fairness to the litigants.
- The law will not go into the technical perfection of the application.

### **Types of amendments:**

There is no thumb rule method for letting or declining revisions. The Courts have very wide options in the matter of the amendment of plea but the court's powers must be applied thoughtfully and with caution.

### **Amendments allowed by the Court:**

- For substantial relief;
- To escape an array of actions;
- taking notice of succeeding proceedings;

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<sup>17</sup> *Ibid*

- Formal amendment;
- To provide more clarifications;
- Parties wrongly described;
- Ignorance of properties inadvertently;
- Error in the declaration of the reason for the action;
- Deletion in the averments in the plaint.

**Amendments refused by the Court:**

- The real question in controversy;
- Changes the essential character of the suit or defence;
- To take away from the other party a legal right accrued in his favour;
- Non-bonafide.

**MEANING OF COMMENCEMENT OF TRIAL**

It is advent from the amended “Rule 17 of Order VI of the C.P.C.”, that after the trial has commenced, the amendment is not allowed unless Court concludes that despite due persistence, litigants could not rake up the issue afore the origination of the trial.

**Guidelines:**

Principles to allow or reject amendments:

- The amendment is vital for the resolution of the case;
- The amendment is bonafide;
- Prejudice caused to the other side which cannot be justified with cost;
- Refusal would lead to discrimination or lead manifold litigations;
- The amendment changes the nature and oddity of the case constitutionally or fundamentally; and
- Amended claims barred by limitation.

### **Awarding costs to the opponent:**

Guidelines for Recompensing the Opponent, whenever an amendment is allowed.

- Stage of the amendment;
- The cost imposed before trial or after the trial stage;
- Properly calculated pecuniary advantage be awarded.
- The cost imposed should not be symbolic but realistic;
- Imposition of extra cost on the opposite party for the delay and inconvenience caused.
- Additional costs are to be borne by the victim if an appeal is made to higher courts.

### **Purpose - Imposing costs:**

- On malafide means designed for delay of the proceedings
- To recompense the subject for the deferral and the embarrassment caused;
- To recompense the other litigant for preventable incidentals on the lawsuit to oppose;  
and
- To caution that the litigants have to be watchful while drafting the original plea.

The Law lords rested that for needless deferral and awkwardness, the litigant must be remunerated with outlays.

### **Generous Methodology to “Order VI Rule 18” is guided:**

In failure to carry out such amendment within 14 days or within the time agreed by the Court, the complainant should not be dispossessed of the advantage of the revision. The process under “Rule 18 of Order VI” should not be applied so meticulously and with the technical hassle that it defeats substantial justice – “*Salmona Villa Cooperative Housing Society Ltd. v Mary Fernandez & Ors.*”<sup>18</sup>

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<sup>18</sup> *Salmona Villa Cooperative Housing Society Ltd. v Mary Fernandez & Ors* (1997) Bom. 208



## CASE LAWS

Despite due diligence, the party failed to present a revision before the beginning of the hearing process – **Pandit Malhari Mahale v Monika Pandit Mahale & Ors.**<sup>19</sup>

Court to decide the necessity of change for defining the dispute – **Rajesh Kumar Aggarwal vs K.K. Modi.**<sup>20</sup>

Allow pre-trial amendments liberally – **Rajkumar Gurawara v M/s. S.K. Sarwagi & Co. Pvt. Ltd.**<sup>21</sup>

## CONCLUSION

As described above, it is established that the revision of the plea cannot be demanded by the litigant as a right. It cannot be repudiated by the Court randomly. However, the preference to be applied by the law machinery is directed by the moralities presented hereinabove. As such “Order VI Rule, 17” is projected for encouraging justice and not to defeat it, therefore allowance of alterations is the rule and denial is the exclusion as also as the additional written statement.

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<sup>19</sup> *Pandit Malhari Mahale v Monika Pandit Mahale & Ors* Civil (Appeal) No. 189/2020

<sup>20</sup> *Rajesh Kumar Aggarwal v K.K. Modi* (2006) SC 1647

<sup>21</sup> *Rajkumar Gurawara v M/s. S.K. Sarwagi & Co. Pvt. Ltd.* (2008) SC 2303