

A NOTE FOR DRAFTING PLAINT FOR A COMMERCIAL SUIT FOR SUMMARY JUDGMENT.

While drafting a Commercial Suit for summary judgment following points have to be kept in mind in addition to usual other points required for drafting an ordinary suit.

1. The Commercial Courts Act 2015 has enacted a separate order as O. XIII A for summary judgment. It is therefore clear that O. 37 of CPC prescribing summary procedure for suits will not be applicable under amended O. XIII A. The plaintiff can apply for summary judgment at any time after summons has been served to the deft but before the court has framed issues in respect of the suit. It will be advisable however to keep in mind the following rules while drafting a plaint where it is intended that in future the plaintiff would like to apply summary judgment.

O.XIII A, R. 3 and 4 (1) –

“ 3. The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that— (a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

4. (1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder:— (a) the application must contain a statement that it is an application for summary judgment made under this Order, (b) the application must precisely disclose all material facts and identify the point of law, if any; (c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,— (i) include such documentary evidence in its application, and (ii) identify the relevant content of such documentary evidence on which the applicant relies; (d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be; (e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief”.

2. As per amended O. 6 R. 3A forms of pleadings in Commercial Court where they are prescribed under the High Court rules or practice

directions should be followed. However, to the best of our knowledge no such pleadings are prescribed yet. We need to therefore follow the ordinary rules of pleadings and plaint as per Order 6 and 7 of CPC.

3. As per amended O.6, Rule 15 A, verification of pleadings in Commercial dispute should be as under :

O. 6, R. 15 A-

15A. Verification of pleadings in a commercial dispute.—

(1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein. (5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.”;

4. Where interest is sought in a suit as per O.7, R. 2A the following requirements need to be followed-

O.7,R.2A-

“Where interest is sought in the suit,— (1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under subrules (2) and (3). (2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that. (3) Pleadings shall also state— (a) the rate at which interest is claimed; (b) the date from which it is claimed; (c) the date to

which it is calculated; (d) the total amount of interest claimed to the date of calculation; and (e) the daily rate at which interest accrues after that date.”;

5. As per amended O.11 disclosure and discovery of documents requires fulfillment of the following conditions :

O.11,R.1 (1) to (6)

“(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:— (a) documents referred to and relied on by the plaintiff in the plaint; (b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff’s case; (c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only— (i) for the cross-examination of the defendant’s witnesses, or (ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or (iii) handed over to a witness merely to refresh his memory. (2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document. (3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody. Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix. (4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession,

control or custody. (5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. (6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant".

6. As per amended O. 11, R. 6 in case of electronic records the following requirements need to be followed –

O.11, R. 6-

“(1) In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000), furnishing of printouts shall be sufficient compliance of the above provisions. (2) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts. (3) Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall specify— (a) the parties to such Electronic Record; (b) the manner in which such electronic record was produced and by whom; (c) the dates and time of preparation or storage or issuance or receipt of each such electronic record; (d) the source of such electronic record and date and time when the electronic record was printed; (e) in case of email ids, details of ownership, custody and access to such email ids; (f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource; (g) deponent's knowledge of contents and correctness of contents; (h) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored; (i) that the printout or copy furnished was taken from the original computer or computer resource.

(4) The parties relying on printouts or copy in electronic form, of any electronic records, shall not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original electronic record. (5) The Court may give directions for admissibility of

Electronic Records at any stage of the proceedings. (6) Any party may seek directions from the Court and the Court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record”.

APPENDIX

STATEMENT OF TRUTH

I....., for deft no 1 do hereby solemnly affirm and declare as under :

I am of the deft no 1 company and I am authorized by resolution of the company dtd in the above suit.

I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto.

I say that para no to ... are true to my knowledge and are based on information received which I believe to be correct and statements made in para no ... to are based on legal advice.

I say that there is no false statement or concealment of any material fact, document or record and I have included information that is according to me, relevant for the present suit.

I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated against me have been disclosed and copies thereof annexed with the say, and that I do not have any other documents in my power, possession, control or custody.

I say that the above mentioned pleading comprises of a total ofpages , each of which has been signed by me.

I state that the Annexrues hereto are true copies of the documents referred to and relied upon by me.

I say that I am aware that for any false statement or concealment, I shall be liable for action taken against me under the law.

Place

Date

AFFIDAVIT

I, Mr. for deft no 1 company Age Yrs.,
Occu. -R/o.

I am filing this affidavit for the purpose of declaring on oath about electronic record i.e. emails filed in this proceeding. I am giving below the details of said electronic records as under :-

A. The parties to such Electronic Record

➤

B. The manner in which such electronic record was produced and by whom;

➤

C. The dates and time of preparation or storage or issuance or receipt of each such electronic record.

➤

D. The source of such electronic record and date and time when the electronic record was printed.

➤

E. In case of email ids, details of ownership, custody and access to such email ids;

➤

F. In case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource.

➤

G. Deponent's knowledge of contents and correctness of contents;

➤

H. Whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of

malfunction that such malfunction did not affect the contents of the document stored;

➤

I. That the printout or copy furnished was taken from the original computer or computer resource.

➤