

ORDER XXXV
INTERPLEADER

1. Plaintiff in interpleader suits.--In every suit of interpleader the plaintiff shall, in addition to other statements necessary for complaints, state--

- (a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) the claims made by the defendants severally; and
- (c) that there is no collusion between the plaintiff and any of the defendants.

2. Payment of thing claimed into Court.--Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

3. Procedure where defendant is suing plaintiff.--Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader suit.

1. Subs. by the Transfer of Property, (Amendment) Supplementary Act, 1929 (21 of 1929), S. 7, for the original Rule, 15.

4. Procedure at first hearing.--(1) At the first hearing the Court may--

- (a) declare that the plaintiff is discharged from all liability to the defendants in respects of the thing claimed, award him his costs, and dismiss him from the suit; or
- (b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so it may adjudicate the title to the thing claimed.

(3) Where the admission of the parties do not enable the Court so to adjudicate, it may direct-

- (a) that an issue or issues between the parties be framed and tried, and
- (b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff;

and shall proceed to try the suit in the ordinary manner.

5. Agent and tenants may not institute interpleader suit.--Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or the landlords.

Illustrations

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader suit against A and C.

6. Charge for plaintiff's costs.--Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

ORDER XXXVI
SPECIAL CASE

1. Power to state case for Court's opinion.--(1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,--

- (a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or
- (b) some property, movable or immovable, specified in the agreement shall be delivered by one of the parties to the other of them; or
- (c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

2. Where value of subject matter must be stated.--Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the fact specified has reference, shall be stated in the agreement.

3. Agreement to be filed and registered as suit.--(1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject matter of which is the same as the amount or value of the subject matter of the agreement.

(2) The agreement, when so filed shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

4. Parties to be subject to Court's jurisdiction.--Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

5. **Hearing and disposal of case.**--(1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties or after taking such evidence as it thinks fit,-

- (a) that the agreement was duly executed by them,
- (b) that they have a bona fide interest in the question stated therein, and
- (c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

ORDER XXXVII

SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS

11. Application of Order.--This Order shall apply only to the High Court and ²[to the District Courts, and to any other Civil Court specially notified in this behalf by High Court].

COMMENTS

Scope. Where execution of negotiable instrument is admitted, then burden of proof of non payment of consideration would lie on its executant. Section 118 of Negotiable Instrument Act, 1881, provides that until contrary is proved, presumption would be that Negotiable Instrument is made/drawn for consideration. [2007 SCMR 1802].

Purpose of O. XXXVII C.P.C., is to ensure decision of dispute on one hand and to limit right of defence of delinquent defendant to defend suit unless he obtains leave of the Court by showing good cause. [2008 CLD 1226].

Loan secured on mortgage security. Loan secured primarily on mortgage security, O. XXXIV, R. 1 of the Code would come into operation. It is the requirement of law that preliminary decree should be passed first. [PLJ 1995 Lah. 140].

Leave to defend. Till such time as leave to defend is granted defendant cannot even file interlocutory application in order to agitate the point of jurisdiction of Court or to question transaction between the parties or to challenge validity and legal effect of

1. This rule was successively amended by the A.O., 1837, A.O., 1949, the Central Laws (Statute Reform) Ord., 1960 (21 of 1960) S 3 and Second Schedule and by the Civil Procedure and Limitation (Amendment) Ord. 1961 (9 of 1961), S. 2.

2. Inserted by Ordinance, XII of 1972.

promissory note and crossed cheque etc, on which the suit is founded. [1997 MLD 1835]. Where triable issues are raised and plausible defences made out, permission for leave to appear and defend cannot be refused outright. [2000 YLR 2456]. Surety bond executed prior to the specified date but could not be produced due to absence of Presiding Officer of the Court, which subsequently produced and accepted by Court, this Act would signify that time fixed by Court for production of surety bond was enlarged by Court u/S. 148, C.P.C. [PLD 1995 S.C. 362]. Once leave to defend granted, suit under this Order will partake the nature and character of a normal suit for recovery of money. [2002 MLD 696]. Suit under O.XXXVII, C.P.C, is governed by Article 64-A of Limitation Act, 1908 and starting point would be when debt becomes payable. Suit cheques according to agreement were to be presented on the dates mentioned thereon. Question of limitation with reference to Article 64-A of Limitation Act, could not be determined without determining question of performance of such agreement after framing of issue and recording evidence thereon. Leave to defend suit was granted. [2007 CLD (Lah.) 1616]. Court granted leave to defendant the suit on the concessionary statement of counsel of plaintiff. [2007 CLD (Lah.) 1084]. Grant of conditional or non conditional leave having direct nexus with plausibility of defence, ultimate success or failure in the suit is no consideration for refusal of grant of relief rather consideration is that the grounds taken in the application for grant of permission to defend the suit and plausible and defendant had arguable case. [2008 CLD 1128].

Suit for recovery on the basis of an alleged pronote. Plaintiff witnesses were not reliable and trusted because one of the witnesses alleged that he was not involved in criminal case lodged against him. No witness was available of passing on of any transaction and a simpleton villager was tricked into putting his thumb-impression on the pro note while none of the witnesses was present. Burden of proving of consideration had not been discharged by the plaintiff. [2010 MLD-20]

Plaintiff had failed to prove his case as setup and that as to why he had paid Rs. 4,00,000 to defendant aged 75 years on his simple request without any relationship with him. Plaintiff had no cause of action and had no come to Court with clean hands. Suit was dismissed with special costs of Rs. 5,000 in circumstances. [2010 CLC 22]

Pronote. Execution of pronote and the receipt denied. No presumption that negotiable instrument if denied still holds the taint of presumption. Substantial question of laws and facts involved needing investigation. It cannot be said that defence is vague or in genuine. Instead of granting conditional leave to appear and defend the ends of justice shall meet if the petitioner is directed to furnish solvent security qua the suit amount to the satisfaction of the Court. [PLJ 2007 Lah. 237]. Loss of an original pronote or inadmissibility of negotiable instrument cannot be made a ground for rejection of plaint. [PLJ 2007 Lah. 354].

Promissory note. A promissory note signed by defendant containing unconditional undertaking to pay certain amount to plaintiff or to his order, not a bond. [2008 CLD 1114]. If it is proved that the consideration was admitted to have been passed on to the debtor before the marginal witnesses and scribe of the documents that would be sufficient proof of payment of consideration. [2008 CLD 1155].

Effective service. To ensure effective service of defendant law has made it incumbent and mandatory that summons be issued in Form 4 appendix B of C.P.C. [2008 CLD 1226].

No specific relationship of deceased on account of whose death counsel did not appear nor even date of death of deceased relative was mentioned. [PLJ 2013 Lahore 182]

2. Institution of summary suits upon bills of exchange, etc.--(1) All suits upon bills of exchange, hundies or promissory notes, may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4 in Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence; in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree--

³(a) for the principal sum due on the Instruments and for interest calculated in accordance with the provisions of Section 79 or Section 80, as the case may be of the Negotiable Instruments Act, 1881, up to the date of the institution of the suit, or for the sum mentioned in the summons, whichever is less, and for interest up to the date of decree at the same rate or at such other rate as the Court thinks fit; and

(b) for such subsequent interest, if any, as the Court may order under Section 34 of this Code; and

(c) for such sums for costs as may be prescribed:

Provided that, if the plaintiff claims more than such fixed sum for costs, the costs shall be ascertained in the ordinary way.

(3) A decree passed under this rule may be executed forthwith.

The following amendment has been made by the Lahore High Court u/S. 122 CPC by Notification No. 65/Legislation/XI-Y-26, dated 26-03-2007; PLD 2004-2009 Supp. Pb. St. 326.

(i) In Rule 2 the following shall be added as sub-rule (1):-

(1) Subject to the provisions of Rule 1, this Order applies to following classes of suits namely:-

- (a) suits upon bills of exchange, hundies and promissory notes;
- (b) suits in which the plaintiff seeks only to recover a debt or liquidated damages in money payable by the defendant with or without interest arising:
 - (i) out of an express contract; or
 - (ii) upon an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of debt other than a penalty; or
- (iii) upon a guarantee where the claim against the principal is in respect of debt or a liquidated damages only; or
- (iv) upon a trust.
- (c) suit for recovery of immovable property with or without claim for rent or *mesne profits*, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit or has become liable to forfeiture for non-payment of rent or against persons claiming under such tenant."

(ii) In Rule 2, existing sub-rule (1) shall be renumbered as sub-rule (2).

(iii) In Rule 2, in renumbered sub-rule (2) the words "upon bills of exchange, hundies or promissory notes" shall be substituted by the words "under this Order".

(iv) In Rule 2, existing sub-rule (2) shall be renumbered as sub-rule (3).

(v) In Rule 2, existing sub-rule (3) shall be renumbered as sub-rule (4).

COMMENTS

Suit for recovery on the basis of pronote and receipt, decreed. Claim of the plaintiff was based on the execution of pronote, to prove the genuineness of the pronote the plaintiff examined petition writer further affirmed by the marginal witnesses. Defendant had failed to rebut by any cogent and substantial evidence the execution of the pronote and the receipt of the suit money from the plaintiff and thus the plaintiff had successfully proved his case by examining and producing the scribe and marginal witnesses of the pronote. Trial judge has rightly appreciated the evidence brought on record and rightly decreed the suit of the plaintiff/respondent. [PLJ 2010 Peshawar 18] Document was attested by two witnesses. Question as to whether the document is a negotiable instrument or not, has not been adjudication upon. [PLJ 2010 Lahore 674] Missing or stolen of cheque book. [PLJ 2015 Quetta 7]

Suit for recovery on the basis of an alleged pronote. No witness was available of passing on of any transaction and a simpleton villager was tricked into putting his thumb-impression on the pro note while none of the witnesses was present.

Burden of proving of consideration had not been discharged by the plaintiff. [2010 MLD 207]

Plaintiff had failed to prove his case as setup and that as to why he had paid Rs. 4,00,000 to defendant aged 75 years on his simple request without any relationship with him. Plaintiff had no cause of action and had no come to Court with clean hands. Suit was dismissed with special costs of Rs. 5,000 in circumstances. [2010 CLC 22] In default of obtaining leave to defend or to appear in his defence the allegation in plaint would be deemed to be admitted and the suit could be decreed against the defendants. [PLJ 2009 SC 933]

On filing summary suit by the plaintiff under O.XXXVII, Rr. 2, 3, C.P.C. for recovery of amount, defendant filed an application under O.VII, R. 11, C.P.C. for rejection of plaint, which application was dismissed being pre-mature. Simultaneously the defendant moved application for leave to appear and defend suit which was allowed and the defendant was granted conditional leave to appear and defend the suit. Instead of complying with the conditional order, defendant once again resorted to an application under O.VII, R. 10, C.P.C. for return of plaint and trial Court proceeded to dismiss application of the defendant filed for return of plaint. Defendant had filed revision against said order of dismissal. Leave to appear and defend the suit conditional, without fulfilling the condition, defendant could not move a step forward much less questioning jurisdiction of the Court. Question of jurisdiction was the pivotal question before trial Court and any finding on the question in revisional jurisdiction by High Court would amount to usurp the jurisdiction of the trial Court. Defendant would be at liberty to urge the question of jurisdiction in the written statement. Impugned order being not whimsical, arbitrary, perverse or capricious, could not be interfered with in revisional jurisdiction. [2010 MLD 218]

Executing Court dismissed application of defendant due to non-compliance of order of the Executing Court and issued warrant of arrest of the defendant, who had filed constitutional petition. Defendant/judgment-debtor was trying to take shelter under the West Pakistan Relief of Indebtedness Ordinance, 1960, according to S. 2(b) of said Ordinance, the debt would not include the debts incurred for the purpose of trade. [2010 MLD 281] Jurisdiction can not be vested by consent of parties and failure of the appellant to raise objection cannot be construed as to vest jurisdiction upon trial Court under Order 37 of CPC and even there is no estoppel against the statute. [PLJ 2010 Lahore 674]

Leave to defend. If application for leave to defend is not allowed by the Court then no option is left with the Court but to decree the suit without recording of evidence and that because object of speedy and summary trial would be defeated. [PLJ 2009 SC 1078] Allegation of fraud not to be determined summarily as same would need recording of evidence. When controversy needs its resolution through evidence, then grant of leave would be the right course. [2009 CLC 308]

Negotiable instrument. Proof of. Section 118 of the Negotiable Instruments Act, 1881, does not envisage a conclusive presumption about the drawing, consideration of the negotiable instrument, rather without any fear of contradiction, it can be held to

be rebuttable in nature and this is so clear and obvious from the expression used in the Section i.e. "until the contrary is proved". There is no explanation about this very conspicuous omission, such quality of evidence on the record in our candid view has excluded the case from the realm of transaction as has been contemplated by the provisions of Section 118 of the Negotiable Instruments Act, 1881. Decision of the matter must be exclusively founded on the presumption of the Section cannot be accepted. [PLJ 2010 Lahore 291 (DB)]

3. Defendant showing defence on merits to have leave to appear.—(1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

(3) The provisions of Section 5 of the Limitation Act, 1908 (IX of 1908), shall apply to applications under sub-rule (1).

High Court Amendments. Lahore. The following be added as sub-rule (3):

"(3) The provisions of Section 5 of the Limitation Act, 1908, shall apply to applications under sub-rule (1)."

COMMENTS

Suit for recovery of amount on basis of cheques. Simultaneously defendant moved application for leave to appear and defend suit which was allowed and the defendant was granted conditional leave to appear and defend the suit. Instead of complying with the conditional order, defendant once again resorted to an application under O.VII, R. 10, C.P.C. for return of plaint and trial Court proceeded to dismiss application of the defendant filed for return of plaint. Defendant had filed revision against said order of dismissal. [2010 MLD 218]

Leave to defend. If application for leave to defend is not allowed by the Court then no option is left with the Court but to decree the suit without recording of evidence and that because object of speedy and summary trial would be defeated. [PLJ 2009 SC 1078]

4. Power to set aside decree.—After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

COMMENTS

Suit decreed ex parte, was barred by time. Court u/S. 3 Limitation Act, which is a mandatory provision of law, is under legal obligation to consider the point of limitation even before passing ex parte decree. [2002 CLC 899].

Power to set aside decree. Suit decreed ex parte, was barred by time. Court u/S. 3 Limitation Act, which is mandatory provision of law, is under legal obligation to consider the point of limitation even before passing ex parte decree. [2002 CLC 899]

5. Power to order bill, etc., to be deposited with officer of Court.--In any proceedings under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

6. Recovery of cost of noting non-acceptance of dishonoured bill or note.--The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

7. Procedure in suits.--Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.