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QUESTION:

What is pleadings? Explain the Procedure of amendment of pleadings as provided in the CPC.

ANSWER:

PLEADINGS:

The term 'pleading' refers to the plaint and written statement. The plaintiff should allege the cause of action. The defendant should state the material facts on which he relies for his defence. Upon these pleadings, issues of law and of fact may arise. An application to sue as a pauper, or a statement of a pleader, or document referred in the pleadings, are not pleading. But statements recorded prior to the framing of issues are pleadings.

The object of pleadings is to make the parties aware of each other's stand, and to narrow down the area of controversy. PLD 1968 SC 1. The parties are bound by the averments made in the pleadings. Pleadings are not evidence themselves. A claim should not be allowed to be defeated on a mere technicality of pleadings. The law relating to pleading is not to be strictly construed.

CONTENTS OF PLEADINGS:

The pleadings of the parties should contain the material facts only, and not the law, nor should they state the legal effects of the facts stated. PLD 1963 SC 153. A party is not required to plead its evidence, or to give names of witnesses. It is for the court to apply the appropriate and correct law to the facts.

NATURE OF PLEADINGS:

The material facts on which a party relies are known as "facta Probanda" and the evidence or the facts by means of which they are proved "facta Probantia". Pleadings should only contain facts probanda and not facts probantia. Pleadings are not deemed to be evidence, and have to be proved by producing evidence.

IMPORTANCE OF PLEADINGS:

Averments made in pleadings do not constitute evidence, but must be proved. Admissions in pleadings must be construed and understood on a reading of the pleadings as a whole and not in parts. A party can only succeed if it proves the facts as alleged, in the pleadings, answers to interrogatories, statements on oath or documents produced, on the basis of which issues are struck.

PARTICULARS IN PLEADINGS:

The pleadings should contain the material facts. This rule however, elucidates the matter in so far as it requires the necessary particulars of such facts should also be given. The term 'particulars' refers to the details the case set up. If more than one matter mentioned in this rule is relied upon, each must be pleaded separately.

AMENDMENT OF PLEADINGS:

Amendments under the Code may be made by the court under Section 152 in case of clerical or arithmetical mistakes in the judgments, decree or orders, or under Section 153 for the purpose of correcting any defect or error in any proceedings in the suit. 1988 SCMR 322. Further a party can apply for amendment in the opponent's pleading under Order 6 rule 16. By virtue of this rule a party may apply for the amendment of its own pleadings. Pleadings can be amended only with the leave of the court. The court cannot suo motu direct amendment. An alternative is to apply for the withdrawal of the suit with permission to file a fresh suit on the same cause of action. This rule is not exhaustive of the powers of the court, which also has inherent power to allow amendment.

ACCRUED RIGHTS:

As a general rule amendment will not be allowed where it will work injustice to any as such it will be allowed where it can be made without injustice to the other side. PLJ 1978 SC 209. An amendment will work injustice if it will result in taking away a right accrued by lapse of time. Accordingly the plaintiff cannot be allowed to add a new cause of action if by the time amendment is sought it has become time barred, nor should an amendment if allowed will deprive a party of the defence of limitation. Where amendment is allowed it should be embodied in the original pleading, or if this is not possible amended pleading should be allowed to be filed, and the pleading as amended shall be deemed to have been presented at the time when the pleading was originally filed, unless it is a case of additional claim. For effect of addition of new parties. However, in the interest of justice, the court can allow an amendment of the pleading even if it has the effect of depriving the defendant of the plea of limitation, and some cases are to the effect that the above rule barring amendment after the expiry of limitation, refers to taking away of legal rights which have accrued to the defendant and not a bare right to plead limitation and where no new cause of action is being introduced, the rule is inapplicable.

RELIEF:

Where no injustice will be caused, the court may at any stage of the suit, allow the plaint to be amended, by permitting an alteration in the relief claimed, as this does not ordinarily change the character or substance of the suit. 1995 SCMR 69. These very principles are applicable where it is sought to add new reliefs. The amendment will be allowed where the relief has been mistakenly or inadvertently left out, but will be refused where the omission was deliberate. Amendment may also be allowed to avoid the plaint as framed from being rejected. Generally such amendment is claimed where the plaintiff becomes entitled to further relief by reason of events subsequent to the filing of the suit, or on coming to know to new facts after instituting the suit, or where a contract is found to be void, the plaintiff may be allowed to claim on the original cause of action, but where the relief sought to be substituted is totally different from that originally sought, amendment will be refused.

NEW CAUSE OF ACTION:

A plaintiff cannot be allowed to substitute by amendment of pleadings a new cause of action for the original cause of action, and for this purpose the substantial nature of the claim has to be looked into. PLD 1985 SC 345. In this context cause of action means a new claim based on a new set of facts. For instance amendment will not be allowed for purposes of converting a claim grounded upon negligence into one based upon nuisance, nor will a suit for declaration of ownership be allowed to be changed into one for the specific performance of the contract, or vice versa. However, a court may permit amendment which will merely add a new cause of action for the relief already claimed, or for purpose of amplifying the same cause of action, or for the removal of clerical errors, or to permit taking note of subsequent events.

REAL MATTER IN CONTROVERSY:

An amendment is allowed in order to determine the real question in controversy, i.e., such questions as arise after the parties have joined issue, and not any matter which the defendant might want to urge after the written statement has been filed. PLD 1982 SC AJ&K 64. Accordingly if the controversy will remain unaffected even if the amendment were to be allowed, the court will not grant permission to amend. Ordinarily permission will be refused if it will not help the plaintiff in substantiating his claim, or the defendant in supporting his defence, as for instance, when permission is sought to raise a claim or defence which is untenable in law. Though the rights of parties have normally to be decided as on the date of the suit, the court can, if justice so requires, take note of subsequent events and allow amendment for this purpose.

At any stage. Amendment can be allowed at any stage, by the trial court before the passing of the final decree. Amendment will relate back to the date of the suit as ordinarily filed if no new party is added, unless an entirely new subject matter is added. It can even be allowed by the first, and the second appellate court, or in revision, or even in appeal before the Supreme Court. It should be liberally allowed where it is asked for before the written statement has been filed. After remand the jurisdiction to allow amendment is subject to the order of remand. Where the appellate court allows amendment, it can also record the evidence and decide the case itself. Delay by itself is, therefore, no ground to

refuse the application for amendment, unless it will work injustice to the other party, as for instance, where it necessitates a fresh trial, or where the party applying for amendment has been negligent, or introduces a totally new case, or where limitation has expired.

BY WHICH COURT:

Amendments can only be allowed by a court having jurisdiction over the matter, and accordingly a court not have jurisdiction cannot allow amendments in order to bring the suit within its jurisdiction. A court permit an amendment which will take the suit out of its jurisdiction. In both these cases the plaint should be returned for presentation to the proper court. Pleadings can be permitted to be amended even after remand provided it is not in conflict with the order of remand.
