**WRITTEN STATEMENT**

## WRITTEN STATEMENT (Meaning):

 **Written statement is the defense of the defendants.** **A 'defense' called the written statement, in** general this is a reply of plaint, in which defendant deny or admit the each and every allegation or facts given in the plaint. Denial or admission must be Para wise and clear. In the written statement defendant can put his case also under the heading additional plea, and can states new facts or ground which is necessary to defeat the opponent. If defendant want to put his own claim against the plaintiff, he can put it by way of set- off and counterclaim u/o 8 Rule 6 and 6A of C.P.C.

### **Drafting of Written Statement:**

Order VIII provides for the filing of a written- statement, the particulars to be contained therein and the manner of doing so. It requires what a written statement should contain. Before drafting the written statement, it is the duty of the defendant to study the plaint thoroughly and all the documents submitted by the plaintiff with the plaint in support of his claim. After the thorough study of the plaint and supported documents a para wise answer of the plaint can be prepared. Order VIII of the Code of Civil Procedure deals with the written statement, set off and counterclaim.

### **Time for Filing of Written Statement (Order VIII Rule 1):**

**The text of Order VIII, Rule 1, as it stands now, reads as under:-**

**"l. Written Statement. -** The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defense:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons".

**Three things are clear. Firstly,** a careful reading of the language in which Order VIII, Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the Court and also does not specifically take away the power of the Court to take the written statement on record though filed beyond the time as provided for. **Secondly,** the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. **Thirdly,** the object behind substituting Order VIII, Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the Court for quick relief and also to the serious inconvenience of the Court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.

Time for filing written statement is fix for 30 days from the date of service of summons on him and maximum time limit from the date of service of summons is ninety days. **Order, 8 Rule 1**

### **Duty of defendant to produce document upon which relief is claimed or relied upon by him (Order VIII Rule 1A.): -**

**"(1)** Where the defendant bases his defense upon a document or relies upon any document in his possession or power, in support of his

defense or claim for set-off or counterclaim, he shall enter such document in a list, and

shall produce it in Court when the written

statement is presented by him and shall, at

the same time, deliver the document and a copy thereof, to be filed with the written statement.

**(2)** Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

**(3)** A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

## **New Facts Must be Specially Pleaded (Order VIII Rule 2.): -**

**Order VIII, Rule 2.** requires that the defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the-transaction is either void or voidable in point of law, and all such grounds of defense as, if not raised, would be likely to take the opposite party by surprise. or would raise issues of fact not arising out of the plaint, as for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

### **Denial to be Specific (**Order VIII Rule 3.): -

**Order VIII Rule 3.** requires that it shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff. but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

### Evasive denial (Order VIII Rule 4.): -

**Rule 4 of Order VIII of C.P.C.** says that where a defendant denies an allegation of fact in a plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

**Specific Denial (Order VIII Rule 5.): -**

 [(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against person under disability.

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.