



Written Statement, Set Off & Counter Claim

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Written Statement (Order 8)

- Also known as Defense Statement.
- It is a statement submitted by the defendant as a reply to every material fact alleged by the plaintiff in the suit
- It is nothing but an answer given by the defendant to the plaintiff.
- It is pleading by the defendant and therefore required to be filed by him personally, or his agent or constituted attorney.
- Filing of a statement by one person on behalf of others is not allowed.

Set Off

- Set off is a claim for debt or damages set up by the plaintiff in relation to his claim.
- It is an action by the defendant against plaintiff, to avoid multiplicity of proceeding.



Written statement

- Defendant has to file his written statement at first hearing or within 30 days from date of service of summons and may be extended up to 90 days.
- No W.S. Order and setting it aside.
- Alongwith W.S. Submit all document on which he relies.





Contents of written statement

- It shall state all matters which show that the suit is not maintainable
- It shall state that the transaction in suit is either void or voidable in point of law.
- It shall show all the grounds of defence.
- It shall show all the grounds not arising out of plaint.



R.2. New facts must be specially pleaded

- The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence 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.





R.3. Denial to be specific

- 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.





R.4. Evasive denial

- Where a defendant denies an allegation of fact in the 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.





R.5. Specific denial


- (1) Every allegation of fact in the complaint, 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 a person under disability :



Set off




- It is reciprocal acquittal of debt.
- It is a cross claim for money by the defendant.
- It can be pleaded in alternative remedy.
- Object of set off is to avoid unnecessary litigation.



R.6. Particulars of set-off to be given in written statement`

- (1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, presents a written statement containing the particulars of the debt sought to be set-off.



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- (2) Effect of set-off—The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off : but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.



Equitable set off

- It means a set off for an unascertained sum of money arising out of cross demands arising out of same transaction.
- Such claim must be within limitation
- Court has a discretion to enquire into
- Ex. Co.v. Share holder, set off for repairs, improvement in mesne profit, commercial transactions.





Essential conditions for legal set off

1. The suit must be for recovery of money.
2. The amount claimed to be set off must be an ascertained sum of money.
3. It must be legally recoverable from the plaintiff.
4. It must not exceed the pecuniary limits of the court.





5. It must be recoverable by the defendant or defendants
6. It must be recoverable by the defendant from the plaintiff or all plaintiff.
7. Both the parties must fill the same character as they fill in the plaintiff's suit



Difference between equitable and legal set off

- Un ascertained and ascertained sum
- Same transaction and may/may not same transaction
- Court is having discretion and court is bound to entertain and adjudicate.

Counter claim



- Defendant, has the claim against the plaintiff which he might have asserted by bringing a separate suit; he may raise it in the existing suit as a counter claim in his written statement.
- Counter claim is treated as a plaint.
- It is ought to be disposed as an independent suit



- R6 (1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired. whether such counter-claim is in the nature of a claim for damages or not :
- Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.



Difference between set off and counter claim

1. Statutory defence and substantial cross action.
2. Ground of defence i.e. shield and weapon of offence i.e. sword.
3. Defendant's claim may extinguish with the plaintiff's claim and defendant's claim continues after plaintiff's claim is extinguished

