

Introduction

Section 9 of the Code of Civil Procedure recognizes the power of ultimate jurisdiction of the civil courts to try all suits of civil nature. But this power is subordinate to the provisions of the Code itself; one of these limitations is stated under Order VII Rule 10.

The court in which a plaint is presented may accept the plaint, or reject the plaint, or it may return the plaint to the plaintiff. It is a first duty of court, before which a suit is instituted to properly examine the plaint, for the purpose of determining, whether it should be returned, or rejected and in order to determine, the question of rejection it is the responsibility the court to take into consideration other materials too, order 7 Rule 11 of CPC narrate cases where plaint should be rejected.

Return of plaint

ORDER VII Rule 10

Nature of Order 7 Rule 10:

Order 7 Rule 10 of CPC is of mandatory nature because the court has no option but to return the plaint; if it is not filed before the proper forum. However if the plaint is transferred by the court to another court which doesn't have jurisdiction to determine the matter in question; the plaint in that case shall be returned to the court which transferred the matter and not

Scope:

The question of return of plaint will arise only if the court has no jurisdiction and the court in which the plaint is filed is of an opinion that the suit should have been filed in another court. The scope of Rule 10 is confined to jurisdictional defects. An improperly instituted suit has to be returned to the plaintiff to be filed before the appropriate Court having jurisdiction.

Stage at which the plaint may be returned:

The plaint shall be returned as soon as the fact of its being placed before the wrong forum comes to the notice of the court. The term at “any stage” includes the appeal stage. However every effort should be made to determine the jurisdiction of the court as soon as the plaint is filed.

Procedure to be followed while returning plaint.

Rule 10(1):

Where at any stage of the suit, the Court finds that it has no jurisdiction, either territorial or pecuniary or with regard to the subject matter of the suit, it will return the plaint to be presented to the proper Court in which the suit ought to have been filed.

BOMBAY HIGH COURT AMENDMENT In Order VII, 10 sub-rule (1)--

..10. Return of plaint.--(1) Subject to the provisions of Rule 10-A. The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. The plaintiff or his pleader shall be informed of the date fixed for the return of the plaint".

[Explanation.--For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.]

Rule 10 (2)

The Judge returning the plaint should make endorsement on the plaint regarding:

The date of presentation of the suit,

The date of return of the suit,

The name of the parties who presented the suit, and

The reason of so returning in brief.

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Rule 10-A:

This rule says that if the Court formed an opinion that the plaint should be returned and the defendant has already appeared, the decision to return shall be intimated to the plaintiff. The plaintiff has a right to make an application to the Court specifying the new Court in which he proposes to present the plaint after it is returned.

He may also request by application that the Court may fix a date for the appearance of the parties in the said Court and that the notice of the date so fixed may be given to him and to the defendant. The Court then shall fix a date for appearance of parties in the proposed Court and give notice.

Rule 10-B:

This rule has been added to Rule 10 with a view to empowering the Court hearing an appeal against an order of return of plaint to direct that, instead of the plaint being returned, the suit may be transferred to the Court in which it should have been instituted. Further, the provision for obviating the necessity for serving summonses on the defendants, where the return of plaint was made after the appearance of the defendants in the suit, have also been included in the rule.

Consequences of non-compliance:

Where the court having no jurisdiction gives its verdict; its decision is coram non iudice and is not binding on anyone.

Effect on limitation period:

Filing of suit in the court having no jurisdiction does not stop the computation of time limitation. And the suit can be barred if the time allowed for filing the suit has been elapsed due to the initiation of proceeding in wrong forum. But can be excluded from period of limitation during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act

Important and Latest Judgment of the Apex Court and High Court:

In the case of

R. S. D.V. Finance Company Pvt. Ltd., Vs. Shree Vallabh Glass works [AIR 1993 SC 2094] the Hon'ble Apex court has held that when the court has come to the conclusion that it does not have jurisdiction to try a suit, the only course to be adopted in such circumstances was to return the plaintiff for representation before the proper court and not to dismiss the suit and not to dismiss the suit.

In HANAMAN THAPPER V. CHANDRA

SHEKARAPPA AIR 1997 S.C. 1307

the plaint was refiled in proper court after making amendment of the plaint. The High Court dismissed such objection but treated the plaint to be a fresh plaint subject to the law of limitation, pecuniary jurisdiction and payment of court fees. The Supreme Court has upheld the order of the High Court and held that it is not always necessary for the plaintiff to seek permission for amendment of the plaint before the court before the plaint was returned.

Vishnu Horticultural Pvt. Ltd. and Anr V.Shampiyan Viniyard Ltd. and Ors. 2010(1)BomCR328

In other words, the service of summons to the defendant would be the date fixed by the court while returning the plaint under Order VII Rule 10. Therefore, the Court in which the plaint was presented was required to follow the procedure contemplated by the provisions of the Code as if it was a fresh suit. The defendant, therefore, has a right to file a fresh written statement in the suit irrespective of the fact whether it is consistent with earlier written statement filed in the court which had no jurisdiction to entertain the suit.

ONGC Ltd. v Modern Construction and Company (2014)1 SCC 648.

The law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order VII, Rule 10, C.P.C. and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.

JAGINDER TULI V. S.L. BHATIA (1997) 1 S.C. 502

when after evidence has been taken of the parties the court was satisfied that the court has no jurisdiction to try the case the plaint was ordered to be presented to the proper court for trial. The High Court in the light of the facts of the case directed the proper court to try the suit from the stage at which it was returned.

**QUITERIA FERNANDES AND ORS. V. STATE OF GOA
AND ORS MANU/MH/2592/2015.**

The honourable High Court of Bombay at Goa held that in order to find the nature of challenge the plaint has to be read as whole along with the prayer clause.

Sureshkumar v. Maharashtra State Electricity
Distribution Company Ltd. 2014 (4) Mh LJ 947.

The provision under Order Rule 10 leaves a Civil Court with no option but to return the plaint and confers no power on the Civil Court to dismiss the suit.

S.R. Thermocole (EPS) Packaging Pvt. Ltd. v. Bajaj Allianz General Insurance Co. Ltd 2015 (5) MhLj 417

Thus the principle of law in aforesaid judgment of the Supreme Court (Ram Ujarey vs. Union of India 1999 (1) SCC 685) is that limitation would not run from the date of the order (returning the Petition) but would run from the date on which the Petition was returned and was made available to the Appellant, if the Appellant was not at fault.

Shankar Govind Pathak V/s balkrishna Shankar Joshi AIR 1926 Bom283

Where a plaint is presented to a Court which has no jurisdiction be try the different causes of action, it is open to the Court to retain the plaint after striking out from it that part of it which is beyond the jurisdiction. In such a case, the plaintiff can file a fresh suit in the proper Court for causes of action as struck out. It is not competent to the Court in such a case to return the plaint for presentation to the proper Court for causes of action beyond jurisdiction, and to proceed on a certified copy of the plaint for causes of action within its jurisdiction.

Rejection of Complaint -

ORDER VII Rule 11:

Nature of Order 7 Rule 11:

The provision contained in Order VII Rule 11 are mandatory and the court has no discretion to reject the plaint once contingencies specified in the provision occur. Before rejecting the plaint, opportunity should be given to the plaintiff to remove the ground of objection wherever possible to do so.

Scope of rejection of plaint:

The scope of this rule is not wider as it does not cover all of the cases where rejection of plaint can be done. The court can reject the plaint where any rule is not followed properly whose observance is indispensable for the ends of justice.

Q :- In what cases plaint can be rejected by a Court ?

If the plaint is defective on any of the grounds mentioned in Order - 7 , Rule - 11 of C.P.C , the plaint can be rejected by the Court . Rule 11 says that the plaint will be rejected in the following cases-

(a) Where it does not disclose a cause of action:

If the plaint filed by the plaintiff does not disclose any cause of action, the Court will reject it, but in order to reject the plaint on this ground, the Court must look at the plaint and at nothing else.

The power to reject a plaint on this ground should be exercised only if the Court comes to the conclusion that even if all the allegation set out in the plaint are proved, the plaintiff would not be entitled to any relief. In that case, the Court will reject the plaint without issuing summons to the defendants.

(b) Where the relief claimed is under valued:

Where the relief Claimed by the plaintiff is under valued and the valuation is not corrected within the time fixed or extended by the Court, the plaint will be rejected.

Proviso to Rule 11 introduced by amending Act 104 of 1976 effective from 1st February, 1977 is suggestive of the fact that enforcement of the rigor of these provisions to a limited extent as indicated in the proviso, leaves it as a discretion of the court despite the fact that the **plaintiff** might not have undervalued the suit and fails to pay the requisite court fee within the time allowed by the court, still the court would allow extension of time,

(c) Where it is insufficiently stamped:

Every suit is instituted by filing of the plaint one of the requirements for the proper institution of the suit is that the plaint must be properly stamped for the purposes of the court fees under the court Fee Act, 1870. If the plaint is insufficient stamp, the court reject the plaint under order 7 rule 11 of CPC and give a sufficient time to solve the cause of failures.

Sometimes the relief claimed by the plaintiff is properly valued, but the plaint is written upon a paper insufficiently stamped and the plaintiff fails to pay the requisite Court fees within the time fixed or extended by the Court. In that case, the plaint will be rejected.

However, if the requisite Court fee is paid within the time extended by the Court, the suit or appeal must be treated as instituted from the date of presentation of plaint or memorandum of appeal for the purpose of limitation as well as payment of Court fee (Sec. 149 C.P.C.).

An appellate Court , under this rule read with section 107 of CPC , before rejecting the plaint , must allow time to the plaintiff to supply the deficit court fee .

If the plaintiff cannot pay the Court fee, Order 33 provides for continuing the suit as a indigent person.

(d) Where the Suit appears to be barred by any Law:

Where the suit appears from the statements in the plaint to be barred by any law, the Court will reject the plaint. For instance, wherein a suit against the Government, the plaint does not state that the notice as required by Section 80 of C.P.C. has been given the plaint will be rejected under this clause or where proper procedure of institution of suit is not followed such as consent of Advocate General is not obtained under Section 92.

This rule authorizes the rejection of a plaint where the suit appears from the statement in the plaint to be barred by any law . Thus , where a suit was filed for damages for defamatory statements in the Parliament , the suit was held to be barred by Article 105(2) of the Constitution .

(e) Where the plaint is not filed in duplicate.

**f) where the plaintiff has not complied with
the provisions of Rule - 9**

where the plaintiff fails to present the copies of
plaint along with requisite fees for service of
summons on the defendants within seven days
from the date of order of service of summons .

g) Other grounds

The grounds that are provided under this rule for rejection of plaint are not exhaustive. If any other relevant ground is made out the case can be rejected. Thus, if the plaint is signed by person not having authority to do so and if fails to rectify the same within the time granted by the court for curing the defect, the plaint can be rejected. Defect in POA is curable. Rejection not warranted.

Rule 12 Procedures on Rejection of Plaintiff:

Where a plaintiff is rejected by the Court, the Judge will pass the order to that effect and will record the reason for it.

When a plaintiff is rejected under Rule-11, the Judge must record an order to that effect, with the reasons for such an order. A plaintiff cannot be rejected against some of the defendants partially and retained against the other defendants, it must be rejected as a whole. An order passed by Court rejecting a plaintiff is a decree under section 2(2) of the Civil Procedure Code and so the order is appealable.

Rule 13 Effect of Rejection of Plaintiff:

Is the plaintiff precluded from filing a fresh suit ?

No the plaintiff is not precluded from filing a fresh suit . According to Rule-13 , the rejection of a plaintiff , on any of the above grounds , does not , by itself , preclude the plaintiff from presenting a fresh plaintiff on the same cause of action within the period of limitation . So plaintiff can file a fresh plaintiff and suit thereby on the same cause of action .

Any order rejecting a plaintiff is a 'decree' and therefore, is appealable.

provided, it is satisfied that the **plaintiff** was prevented by any cause of an exceptional nature and if time was not extended, it would cause grave injustice to the **plaintiff**. While in relation to sub-clause (a) and Â(c) to (f), the law has not vested any discretion as is indicated in the proviso which relates to sub-clause (b) of Rule 11 of Order VII of the Code.

Important and Latest Judgment of the Apex Court and High Court:

Saleem Bhai Vs. State of Maharashtra, AIR 2003 SC 756, it has been held that the application for rejection of plaintiff has to be decided based on averment in the plaint and the pleas taken by the defendant are wholly irrelevant at that stage and directing the defendant to file written statement without deciding an application under Order 7 Rule 11 is procedural irregularity touching the exercise of jurisdiction in the court.

D. Ramachandran v/s R.V. Janakiraman (AIR 1999 SC 1128).

“it is elementary that under Order 7 Rule 11 (a) Civil Procedure Code, the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition.”

Popat and Kotecha Property v/s. State Bank of India Staff Association 2005 (7) SCC 510 : 2005 (6) Supreme 7 : 2005 (12) JT 302 : 2005 (7) Scale 3.

“Clause (d) of Rule 11 of Order VII applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. It is further held, there cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation.

Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair splitting technicalities. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that is barred by any law to attract application of Order VII Rule 11”.

Sopan Sable Vs. Asst Charity Commissioner [(2004) 3 SCC 137]

it is held that the real object of Order 7 Rule 11 is to keep out of Courts, irresponsible law suits. For the purpose of deciding an application under clauses (a) and (d) of Order 7 Rule 11, the averments in the Plaint are germane. In exercise of its jurisdiction under Order 7 Rule 11 what is required is a meaningful and not a formal reading of the Plaint and clever drafting which creates an illusion of a cause of action ought not to detract from the jurisdiction of the Court on an application for rejection.

In **T. Arivandandam Vs. T.V. Satyapal [AIR 1977 SC 2421]**, it has been held that if on a meaningful reading of the plaint, it is manifestly vexatious and merit-less in a sense of not disclosing a clear right to sue, the trial court should exercise its power under order 7 Rule 11.

In the case of **Premlata Nahata Vs. Chanti Prasad Sikaria**, AIR 2007 SC 1247 it has been held that defect of mis-joinder of parties and causes of action is not a ground for rejection of plaint.

**In M. V. Sea Success Vs. Riverpool and
Landon Steamship Projection and
Indemnity Association Ltd., AIR 2002
Bombay 151** court held that plaint can be
rejected against some of the defendants.

Commercial Aviation and Travel Company and others vs. Vinola Pawallkan (AIR 1988 SC 1636).

“Order VII, Rule 11(b) contemplates correct valuation and not approximate correct valuation and such correct valuation of the relief has to be determined by the Court. If the Court cannot determine the correct valuation of the relief claimed, it cannot require the plaintiff to correct the valuation and, consequently, Order VII, Rule 11(b) will not be applicable. But, there may be cases under Section 7(iv) where certain positive objective standard may be available for the purpose of determination of the valuation of the relief.

If there be materials or objective standards for the valuation of the relief, and yet the plaintiff ignores the same and puts an arbitrary valuation, the Court, in our opinion, is entitled to interfere under Order VII, Rule 11(b) of the Code of Civil Procedure, for the Court will be in a position to determine the correct valuation with reference to the objective standards or materials available to it".

In the case of **Jageshwari Devi and others Vs. Satrugan Ram, (2007) SCC 52** it has been held that non disclosure of cause of action is distinct from defective cause of action.

In I.T.C. Ltd. Vs. Tax Recovery Appellate Tribunal and others, AIR 1998 SC 634
apex court held that even after framing issues
plaint can be rejected.

**In the case of Pratibha Singh V/s Shanti Devi Prasad reported
in 2002 (8) Supreme 553,**

on the proposition that the defects in identifying the suit property can be cured without dismissing the case or rejecting the plaint. The plaint cannot be rejected outright under Order 7 Rule 11 of CPC for not producing any sketch or map showing the structures and the party should be given an opportunity to produce such sketch or plan at the stage of production and inspection of documents and trial.

Shri Naru B. Shetkar vs Vishram Jaya Shetkar
Alias Manohar Jaya Shetkar And Ors. (1999)
101 BOMLR 544.

On plain reading of the said provision of law, it is apparent that the powers thereunder can be exercised only by taking into consideration the pleadings in the plaint. There can be no doubt that when plaintiff sues upon a document in his possession or power, he is bound to produce a true copy of such document alongwith the plaint.

Such a copy of the document would, therefore, be a part of the pleadings filed by the party and, therefore, the contents of such a document would naturally form part of the pleadings in the complaint. Therefore, in such cases the Court may in exercise of the powers under Order VII, Rule 11 take into consideration the contents of such a document since the document forms part of the pleadings.

THANK YOU