**PROCEDURE TO FILE A CIVIL SUIT IN INDIA**

Civil cases involve a dispute between people or institutions, generally over civil rights. A civil suit begins when a legal person claims that he has been injured by the actions of another person or business and asks the court for relief by filing a “plaint”. Section 26 of the Code of Civil Procedure states that a suit shall be instituted by the presentation of a plaint. Most of the civil suits are guided by the well settled principles of the Code of Civil Procedure.

There is a detailed process laid down in Code of Civil Procedure, for filing a civil case. If the process is not followed strictly, then the registry has a right to dismiss the suit. “*Registry here means an office which every court has which provides the information about any court matter and court forms”.*

The requirements for filing a civil suit is as follows:

### **Plaint**

The first step to initiate a suit is to file a plaint. A plaint is a written complaint or allegation. The party who files it is known as “Plaintiff” and the party against whom it is filed is known as “Defendant”.

According to Order VII rule 1 of the Civil Procedure Code, a plaint shall contain

* Name of the Court
* Name and Addresses of the parties between whom the dispute arose
* A brief statement telling about the sections and orders under which the jurisdiction of the court is evoked
* Main Content or submissions made by the Plaintiff. Only facts should be submitted, not provisions of law or evidence.
* The relief claimed
* Verification from plaintiff stating that the contents of the plaint are true and correct.

In *N.K Rajendra Mohan v. Thirvamadi Rubber Company[[1]](#endnote-2),* the Supreme Court held that if an issue is not raised in the plaint, then the plaintiff's plea based on such an issue, which lacks foundation in the plaint, need not be entertained by the court

### **Affidavit**

According to section 26 and order VI rule 15(4), every plaint shall be accompanied by an affidavit to prove the facts stated in the Plaint. The requirements of an affidavit is provided under order XIX. According to the provision, an affidavit must contain the facts presented from the knowledge of the person swearing the affidavit, and it must be presented in a chronological order.If any fact presented in the affidavit is not of the person's own knowledge then it must be specifically mentioned so.

In*Barium Chemicals Ltd vs Company law Board[[2]](#endnote-3) it* was held that if an averment in the affidavit is not based on personal knowledge, then the source from where it was obtained must be clearly mentioned

### **Vakalatnama**

Vakalatnama is a written document, by which the parties to the suit authorises an Advocate to represent them before the Hon’ble Court, by virtue of the provisions of Order III, rule 6. However, if the party is personally representing his/her own case, then they need not file a Vakalatnama.

A vakalatnama should contain that-

* That the client will not hold the Advocate responsible for any decision
* That the client has to bear all the cost and expenses incurred during the proceedings
* That the advocate will have a right to retain the documents, unless complete fees is paid
* That the client is free to disengage the Advocate already appointed, at any stage of the Proceeding
* That the advocate shall have all the rights, to take decisions on his own during the hearing in the court of Law, in the best interest of his client.

In*Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Anr*.[[3]](#endnote-4) it was stated that Vakalatnama is a species of Power of Attorney and is an important document, which enables and authorizes the pleader appearing for a litigant to do several acts as an Agent, which are binding on the litigant who is the principal. It is a document which creates the special relationship between the lawyer and the client. It regulates and governs the extent of delegation of authority to the pleader and the terms and conditions governing such delegation. It should, therefore, be properly filled/attested/accepted with care and caution. Obtaining the signature of the litigant on blank Vakalatnamas and filling them subsequently should be avoided.

**Filing of Plaint**

Next step is filing of the plaint before Chief Ministerial Officer at the filing counter, along with appropriate court fee and process fee(For different types of documents, a person has to pay different amount of Court fees.) The plaint should be filed in duplicate. The Affidavit, Vakalatnama and also any documents relied in the plaint should also be filed in the registry along with the Plaint.

### **Court Fees**

Court fees is a nominal percentage of the total value of the claim or the value of the suit. The requisite amount of Court fees and stamp duty is different for every suit, and the same is mentioned in the “Court Fees Stamp Act”. The value of court fee differs from state to state.

The court fee is considered paid by affixing the required amount of court fee stamps according to the amount of court fee to the plaint. The court fee stamps can be purchased from stamp vendors in the court.

**Numbering of Plaint**

Once the proper procedure is complied and the necessary court fee is paid the registry will provide a filing number. After this the registry will scrutinize the plaint to see if it is compliant with the procedures of the Code of Civil Procedure.

If the Plaint is devoid of any defects and completely complies with the Code, the plaint gets numbered, which can be found out using the filing number. After the plaint gets numbered it is then listed before the relevant judge for adjudication.

If the plaint contains defects, then it is returned, and the plaintiff can correct the defects and file the plaint once again after correcting the defects.

**Rejection of Plaint**

Order 7 Rule 11 of CPC, discusses Rejection of Plaint which states that whenever a plaint is filed in any civil court for any claim/compensation to be recovered from the opposite party it can be rejected by fulfilling the following conditions mentioned below.

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

(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) Where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so.

(d) Where the suit appears from the statement in the plaint to be barred by any law;

(e) Where it is not filed in duplicate

In a recent order of the Supreme Court in *Shaukathussain Mohammed Patel v Khatunben Mohammedbhai Polara[[4]](#endnote-5)* the court reiterated that the averments in the plaint has to be taken in its entirety and only then can a plea for rejection of plaint be considered. There cannot be any compartmentalisation of the various contents of the plaint.

1. (2015) 9 SCC 326, [↑](#endnote-ref-2)
2. AIR 1967 SC 295 [↑](#endnote-ref-3)
3. (2006) 1 SCC 75 [↑](#endnote-ref-4)
4. Civil Appeal No. 8197 of 2019, Order Dated 22.10.2019 [↑](#endnote-ref-5)