



NON-ADMISSIBILITY OF EVIDENCE BEYOND PLEADINGS

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ABSTRACT

Pleadings are considered as the backbone of any legal action in a court of law. They entail an understanding of the mechanics of evidence adduction. The case begins and proceeds on the basis of pleadings. They can be in the form of a written statement, a claim or a defence filed and recorded in writing by either or both the parties, stating their own version of the dispute, based on which the other party shall file its counter affidavit, rejoinder, etc., explaining why the plaintiff's or defendant's contentions should not prevail. Pleadings also form the platform on which the edifice of the case is erected and the evidence presented in trials is the construction carried out on the said platform or plinth.¹ They also assist the courts in determining the ambit of evidence which the parties should be allowed to produce at the trial. Within such range, the parties are allowed to submit evidence in favour of their contentions and within such range only, the court considers the admissibility and non-admissibility of evidence. The range of admissible evidence becomes essential as not all evidence can be admitted by the court, as and when produced by the parties as it will violate the general rule of not admitting evidence beyond pleadings and therefore, the

purpose of pleadings in a suit would be rendered unnecessary. The content of the following article shall explain the importance of pleadings and the rule of non-admissibility of evidence beyond pleadings. The article shall discuss all the important principles in relation to the rule needed to be followed by both the court and the parties, and the consequences followed in case of non-compliance with this settled principle of law. The content shall end by providing an exception to the above rule and a conclusion derived from the research conducted.

INTRODUCTION

When a lawsuit is filed, the documents that are filed by plaintiffs and defendants into the court record at the start of the case are called pleadings. Pleadings help in recognising the material facts which form the basis of the case of the concerned parties which further helps in understanding the issues the parties seek to have decided. They provide a benchmark of revelations before trial as it requires parties to recognise all material facts and issues and thus results in the inadmissibility of evidence. It can be said that pleadings provide the build-up of the procedure with the end means of achieving justice.

The aim of pleadings is to offer all sides an intimation of the case of the opposite side to be met and to enable courts to work out what's really in dispute between the parties.³ The basic idea behind pleadings, be it a statement of claim, defence or reply, is of identifying the real issues between the parties, to limit the evidence of the trial

¹ Sudarshan Khanna v. Krishna Kanta Bhasin, (2002) 61 DRJ 267.

² Chenoweth Law Group, *What are pleadings in civil litigation?*, Chenoweth Law Group (Mar. 27, 2020, 21:44 PM),

<https://www.chenowethlaw.com/blog/2016/04/what-are-pleadings-in-civil-litigation.shtml>.

³ Nand Kishore Lalbhai Mehta v. New Era Fabrics Pvt Ltd. & Ors., (2015) 9 SCC 755.



subject to the issues formed and to guarantee that no party is taken at any disadvantage by the introduction of matter not certain from pleading and the trial proceeds smoothly towards judgement, upholding the principles of a fair trial. In other words, it is only justified that a party while entering into a trial should know in advance the basic idea of the case they will have to face in the trial. Relief not pleaded in a pleading should not be granted is a legally accepted proposition. Therefore, the court cannot reach to a conclusion that is beyond the scope of pleading.⁴ Along these lines, the pleadings play a role of assisting the court in narrowing the scope of controversy in question and make parties aware of the issue so that they can adduce the appropriate evidence.

The issue is formed when one party denies the material facts pleaded by the opposite party. It is not necessary for a fact to be an issue only when it is explicitly denied; even a part of a fact can be an issue. The reason behind framing issues is to determine the focus of the court by limiting the scope of the dispute. For it is the formation of an issue which guide the parties in the matter of adducing evidence and not the pleadings.⁵

It is necessary for parties to plead all the material facts and the issues should be formed on the basis of those facts. The purpose of this is to provide the opposite party with fair notice of the case before the trial to prevent any injustice. Pleadings are admitted as a record of the proceeding and on

the basis of those records, issues are framed. The primary party is entitled to confine the opposing party to its own pleading as the primary party is at trial only to satisfy the issues raised on its pleading. In a situation where a party overlooked to plead all the necessary material facts on which it relies but made the opposite party aware of those facts at trial, then in such case, if the court decided the proceedings on the basis of pleadings then the party would be denied natural justice. The object and purpose of pleadings are to make sure that the parties are well aware of the issues. This also helps to avoid any unwanted lengthening of the trial process. Issues serve the objective of limiting the scope of questions of law required to be decided by the court so that a party can produce the most appropriate evidence in its support.

In *Kashi Nath (Dead) through L.Rs. v. Jaganath*,⁶ it was held that where the evidence is not in line with the pleadings and is at variance with it, the evidence cannot be looked into or be depended upon. At the point where the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the pleadings, the court cannot concentrate its own attention or the attention of the parties thereon claims or relief, by framing an appropriate issue. Along these lines, it is said that no amount of evidence, on a plea that is not suggested in the pleadings, can be looked into to grant any relief.⁷

OBJECTIVE

⁴ Y. Srinivasa Rao, *A CIVIL SUIT DEPENDS ON THE PLEADINGS*, WordPress (Mar. 17, 2020, 23:44 PM), <https://articlesonlaw.wordpress.com/2018/03/26/a-civil-suit-depends-on-the-pleadings/>.

⁵ Sayad Muhammad. v. Fatteh Muhammad, (1895) ILR 22 Cal 324.

⁶ *Kashi Nath (Dead) Through Lrs v. Jagannath*, (2003) 8 SCC 740.

⁷ *Bachhaj Nahar v. Nilima Mandal & Ors*, AIR 2009 SC 1103.



The importance of a pleading is precluded by providing the case a foundation on which the parties can build their further arguments. Pleadings work as a guide in the entire journey of legal proceedings by providing the parties with a clear direction to form their claim or defence, based on such pleadings. They ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration.⁸ Thus, the object and purpose of pleading are to enable the adversary party to know the case it has to meet. In order to have a fair trial, it is imperative that the party should state the essential material facts so that the other party may not be taken by surprise.⁹ A party cannot be made to produce new evidence at the cost of causing a disadvantage to another party. A fair trial is one where parties are afforded an opportunity of presenting their side of the case without causing any prejudice to the other party by strictly following the due process of law and neither putting themselves at any prejudice as well. The rule of fair trial aims to uphold the 'right to equality' to meet the ends of justice and thereby, help to maintain a sense of balance in the society. If one party is given preference over the other by accepting whatever claims and evidence they have made and presented without considering whether such evidence is or will be of any relevance to the matter at hand, it would result into grave harm to the other party as it would raise a new question of law altogether and the arguments may get side-tracked from the main issue at hand. The objective of the non-admissibility of evidence beyond pleadings extends to protecting either or both

parties from consequences that they may have to face because of a mistrial or an unfair trial. A party cannot be allowed to present such evidence in support of its case for which no pleading has been made in the statement of claims by it. The other party should be made aware of the foundation on which the first party is making the other party liable for any wrong and claiming compensation or remedies and if any evidence is produced beyond such claims made then it will amount to a gross miscarriage of justice as the matters essential to the case would be side-lined. The other side should be able to prepare itself beforehand and should not be at a loss in the court of law. It should not be made a stranger in its own case. The party producing evidence outside the arena of its pleadings will be deemed to be misleading the case. Moreover, if the court allows such evidence beyond pleadings to be legally admissible and passes order based on such evidence, trials and judgements based on such evidence would be deemed to be erroneous. It will be a blatant ignorance of the settled principle of law.

Pleadings help the court in determining the burden of proof. The burden of proof is fixed on the basis of the contentions of the aggrieved party. In criminal trials, the burden of proof lies on the prosecution to prove its case or defence based on the pleas and evidence produced by the appellant beyond any reasonable doubt. In civil cases, burden of proof lies on the party to prove only a few affirmative contentions with the help of shreds of evidence. The necessity of proving the guilt beyond any reasonable doubt is not raised and required in civil suits. Thus, in both civil or criminal cases, the burden of

⁸ Arikala Narasa Reddy v. Venkataram Reddy Reddygari & Anr, (2014) 5 SCC 312.

⁹ Ram Swarup Gupta v. Bishun Narain Inter College, (1987) 2 SCC 555.



proof has to be fixed on the basis of arguments made and thereafter, the evidence is required to be produced in the court. The burden of proof decides the level of evidence which the party is required to produce in order to help its claim. If some evidence has been produced which is not in conformation with the written statement, plaint, rejoinder or any type of another pleading then it may disturb the position of the whole case and cause the burden of proof to be shifted from one party to another. In order for the court to reach to a conclusion, the party responsible needs to satisfy the burden of proof which is done with the help of pieces of evidence and if the same are not admissible and acceptable as legal evidence in the court, the burden of proof will not be satisfied and if the burden of proof falls or shifts on the wrong party, the judgment of court lead on such trial stands vitiated in the eyes of law.¹⁰

This rule also prevents the party to weaken its own case. If the party produces documents to be admissible as evidence in the court of law, facts of which have neither been pleaded in the court by the party itself nor do they relate to it by even liberally constructing the pleadings of that party, their own case may look like a concocted story, baseless and misdirected. Such practice puts an impression in the court of law that the party themselves are not aware of their case. The court may even dismiss the plaint on malicious grounds which would directly benefit the defendant, at the cost of more sufferance to the plaintiff.

In the case of Prakash Rattan Lal v. Mankey Ram¹¹ defendant stated in its written statement that his total holding was 25 bigha

and 1 biswa only but he attempted to submit evidence which showed that his holdings extend much beyond the above-said area, which was held to be beyond the scope of pleadings. The Delhi High Court in its judgement held that the parties take a fixed stand through pleadings. Both parties are required to state the complete and true facts before the court. And once the facts are stated by both parties, the court frames the issues and asks parties to lead evidence. It is settled law that the parties can lead evidence limited to their pleadings and parties while leading evidence cannot travel beyond pleadings.¹² Apex Court has held that if the pleadings are silent on a certain issue then no evidence can be looked in relation to that issue.¹³

Prosecutors and defendants in criminal or civil proceedings present evidence in support of their claims and arguments, which forms part of a trial. Each side should have the opportunity to review the other side's contentions and thereby produce the evidence which is supposed to be taken in defence in a trial in order to form their own case and raise objections, if any, to the introduction of certain evidence before or during the trial. The entire reasoning behind filing pleas, be it a statement of claims, written statement, rejoinder, etc., is to characterize the issues relevant to the dispute, to limit the submission of evidence in a trial to the issues pertinent to the dispute, and to guarantee that the trial may continue towards a fair judgment without either party being taken off guard by the acceptance of evidence not reasonably determined from the pleadings. In the broad outline, the case which the parties

¹⁰ Rangammal v. Kuppuswami, AIR 2011 SC 2344.

¹¹ Prakash Rattan Lal v. Mankey Ram, (2010) 166 DLT 629.

¹² Ibid.

¹³ Bondar Singh v. Nihal Singh, (2003) 4 SCC 161.



have to meet should be known to the parties beforehand.

The Apex Court in Sri Venkataramana Devaru and Ors. v. The State of Mysore and Ors.,¹⁴ held that the object of requiring a party to put forward his pleas in the pleadings is to enable the opposite party to controvert them and to adduce evidence in support of his case. And it would be neither legal nor just to refer to evidence adduced with reference to a matter which was actually in issue and on the basis of that evidence, to come to a finding on a matter which was not in issue, and decide the rights of parties on the basis of that finding.

In Abubakar Abdul Inamdar v. Harun Abdul Inamdar,¹⁵ the Supreme Court observed that if the party has not raised a plea regarding adverse possession in its pleadings, it cannot substitute the pleadings with the evidence as pleadings form the foundations of the claim of a litigating party. Allahabad High Court has observed that the pleadings also serve the purpose of alerting a party in the case of another party. This will enable the adversary/opposite party to assert its defence and/or refusal in its pleadings and tender its evidence in regard thereto. The principle of pleadings is to ensure that no party spring surprise on another making him unable to defend himself.¹⁶

Fair Trial and Rule of non-admissibility of evidence beyond pleadings

Conducting a trial in a fair and a just manner aids in preventing miscarriages of justice. It

is considered as one of the essentials in order to ensure that justice and only justice prevails. An individual who has been accused of an offence or involved in any other type of legal dispute ought to have its innocence determined by a reasonable and successful legitimate procedure. It has the right to a fair trial, which means fair hearing opportunity, within a reasonable time and by an impartial judge. It should be given a chance to present his side of the dispute. Be that as it may, it isn't just about securing suspects and respondents. Without conducting the trial in a fair manner, there will be no confidence in the judiciary and trust in the rule of law may collapse. Hence, another object of the rule of non-admissibility of evidence beyond the pleas is to prevent the trial to be conducted in an unfair manner. The aim is to safeguard the parties from being the victim of an unfair trial and to help them keep their faith in justice. In order to do so, it is the duty of the court to ensure that no party is taken by surprise at trial and no new facts are brought through evidence that has not been stated in the written statement.¹⁷ Every plea should have its foundation in pleadings and in the absence of it, no evidence adduced can be looked into because it will be unjust for the opposite party as it will have no opportunity to contradict it. If the court accepts the new plea then the matter has to be remitted to the original court for a fair re-trial of the matter to give a justified opportunity to the opposite party.¹⁸

The Apex Court in Ram Sarup Gupta v. Bishun Narain Inter College,¹⁹ held that "it is

¹⁴ Sri Venkataramana Devaruand & Ors. v. State of Mysore & Ors, AIR 1958 SC 255.

¹⁵ Abubakar Abdul Inamdar (Dead)by Lrs. & Ors. v. Harun Abdul Inamdar And Others, (1995) 5 SCC 612.

¹⁶ Ganga Prasad Rai v. Kedar Nath Rai, (2019) All 323.

¹⁷ *Supra* note 11.

¹⁸ Shaik Nurbi v. Pathan Mastanbi And Ors., (2004) 4 ALT 624.

¹⁹ Ram Sarup Gupta (Dead) By Lrs. v. Bishun Narain Inter College & Ors., (1987) 2 CR 805.



well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading are to enable the adversary party to know the case it has to meet”.

Ad Infinitum and Rule of non-admissibility of evidence of pleadings

Suppose a plaintiff has submitted a document to be admissible as an evidence in a trial, which does not conform to the pleadings made by the plaintiff itself. If such evidence is admitted by the court then it would only result into an unnecessarily prolonged trial of the case as the defendant would have to look into or go through the new evidence and thereafter prepare its own arguments based on the same, which may or may not relate to the pleadings. Since the evidence of the plaintiff were allowed to be admissible in the court, the defence would also be provided with the liberty to go beyond its counter on the basis of pleadings of the plaintiff as the plaintiff's contentions have been rendered useless the moment it produced evidence beyond its own plaint. Now, this cycle of submissions and admission of new evidence and their review and reply by the other party continues ad infinitum. It will turn into a non-terminating process with no resultant end. The proceedings will go on for an irrelevantly lengthy period and thus, where justice is delayed it is denied. Such prolonged trials would not only cause the parties to invest their valuable time in the case but also

increases the expense which needs to be spent in the case by the parties, which sometimes even leads to a total drain in their wealth!

Therefore, in order to not to make either of the parties go through any delay or suffer any hardship that may ensue by making them go through one or more than one rounds of litigation, it is imperative to limit the submission of evidence within the scope of pleadings.

“The pleadings of the parties form the foundation of their case and it is not open to them to give up the case set out in the pleadings and propound a new and different case.”²⁰ It would force the court to be distracted from the real issue which should be discussed, on to an irrelevant and meritless point. It would also cause the issues to be unnecessarily enlarged. In fact, the whole point of this rule is to bring the parties to discuss only relevant and definite issues and thereby, diminish expense and delay especially as regards the amount of evidence that would be required to be produced on either side at the hearing.²¹

Duty of courts to abide by the rule of non-admissibility of evidence beyond pleadings.

It is imperative upon the court of law to abide and follow any settled principle of law in order to set an example of its strict observation by the parties as well. In doing so, the courts not only uphold the sanctity of such principle, but they also set a precedence for other courts and protect the faith of the victim which comes to the court in hope of some remedy as to a matter of its right. If the court commits the violation of any legal

²⁰ Vinod Kumar v. Surjit Kaur, AIR 1987 SC 2179.

²¹ Thorp v. Holdsworth, 637 Ch. D. 3, 639 (1876) (USA).



provision or principle then the parties would do the same under the defence of the court itself is in violation of the principle and thus the trial will be vitiated and the only victim of such trial will be the victim itself.

It has consistently been an obligation on the Court to choose with respect to how much of an evidentiary value ought to be given to a specific bit of proof or evidence and in this manner, if a part of the evidence affidavit is seen as insignificant or if it is discovered that a piece of the evidence in question has no establishment in the pleadings, the court has complete authority to dispose it off as inadmissible while delivering its judgement.²²

The pleadings provide a platform for the parties to present their case in a concise manner. If the parties are allowed to lead evidence beyond pleadings then the sacrosanct of pleadings comes to an end and the entire purpose of filing pleadings also stands defeated.²³ It becomes the duty of the court to discourage the submission of such evidence and reach to a decision based on those pieces of evidence which are in relation to the contentions made by the parties in their written statements or plaints.

The Hon'ble Supreme Court has set its face against the adjudication of an issue which was not pleaded. If the pleadings are not appropriate or do not give sufficient details, they may not raise an issue and the court can

reject the claim. It is the duty of the court to make sure that all the material facts are contained in the pleadings. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case.²⁴

In *Nand Kishore Lalbhai Mehta v. New Era Fabrics Pvt. Ltd. & Ors.*²⁵ it was observed that all the required material facts should be pleaded by the party in support of the case set up by it. No party can be permitted to travel beyond its pleadings. A court cannot make out a case that isn't pleaded. The court should confine its decision to the questions raised within the pleadings. Rather than emphasizing on the shape of the pleading, the substance of the pleading should be considered.

The Supreme court has observed in a case that decision of the case should be within the circumference of the pleadings. The court cannot grant the relief not asked for. And in order to get a relief not pleaded, there has to be an amendment in the pleading.²⁶ Apex Court in the case of *National Iron & Steel Co. Ltd. v. The State of West Bengal & Anr.*,²⁷ held that the employers cannot be permitted to lead evidence beyond their pleadings and leading of the evidence beyond the pleadings is wholly unwarranted and the conclusions based on such evidence is vitiated in law. It is the duty of the court to be on guard while recording any evidence to prevent the

²² Shivam Goel, *Can the Court order deletion of portions of Evidence Affidavit?*, Tilak Marg (Mar. 28, 2020, 19:54 PM), <https://tilakmarg.com/opinion/can-the-court-order-deletion-of-portions-of-evidence-affidavit/>.

²³ *K.R. Arumugam (Dead) v. P. Semmalar*, (2019) Mad 666.

²⁴ *SBI v. S.N. Goyal*, (2008) 8 SCC 92.

²⁵ *Supra* note 3.

²⁶ *Trojan & Co. v. Nagappa*, AIR 1953 SC 235.

²⁷ *National Iron and Steel Co. Ltd. & Ors. v. The State of West Bengal & Anr.*, AIR 1967 SC 1206.



admission of any evidence sans pleadings. The judgement of the court should be on the basis of the pleadings.²⁸

As per the pleadings, if there are opinions that are defective or in agreement by the relevant parties, there is space for making decisions upon them. As so, those which are in admissions and those which are in issues are recorded separately.²⁹

Exception to the general rule of non-admissibility of evidence beyond pleadings.

Order VII Rule 14 of the CPC provides that if the plaintiff relies upon a document in support of his claim then he has to produce such a document in the court during the presentation of the plaint. Order VIII Rule 1(A) provides that the defendant relies upon a document in support of his counterclaim then he has to produce such a document in the court when the written submission is presented by him.

Proviso of the above rule is that the proof and admissibility of such documents that are filed along-side affidavit shall be subject to the orders of the court. This means that the documents are filed along with the chief-examination. It is on the court to decide the admissibility of such documents. It has been made clear in Order XVIII Rule 4 of CPC that while recording evidence, a witness has to file an affidavit along with the copies of the document which ought to be supplied to the opposite party.

In *Pushottam Shankar Ghodgaonkar v. Gaianan Shankar Ghodgaonkar*,³⁰ it was held that though production of documents can be allowed for cross-examination of the witness of the other party, the documents cannot be produced at the time of cross-examination of opposite party by casting surprise upon him. A defendant cannot be confronted by the plaintiff by producing documents for the first time during the cross-examination and it was not open for the trial court to allow the production of a document to confront the original Defendant.

In the case of *Rakesh Kumar v. Pawan Khanna*³¹ the Hon'ble Delhi High Court placed heavy relevance on its previous decision in the case of *Subhash Chander v. Shri Bhagwan Yadav*³² in which it held that Order VII Rule 14(4), Order VIII Rule 1 (A) (4), as well as Order XIII Rule 1(3), provide that the provisions requiring parties to file documents along with their pleadings and/or before the settlement of issues do not apply to documents produced for the cross-examination of the witnesses of the other party. To the same effect, Section 145 of the Evidence Act also permits documents to be put to the witnesses, though it does not provide whether such documents should already be on the court record or can be produced/shown for the first time. However, in view of the unambiguous provisions of the CPC, it cannot be held that the document cannot be produced/shown for the first-time during cross-examination. If the witness to

²⁸ Workshop paper on Recording of Evidence in Civil Proceedings, Maharashtra Judicial Academy and Indian Mediation Centre and Training Centre (Mar. 16, 2020, 12:14 AM), [http://mja.gov.in/Site/Upload/GR/Title%20NO.33\(As%20Per%20Workshop%20List%20title%20no33%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.33(As%20Per%20Workshop%20List%20title%20no33%20pdf).pdf).

²⁹ *Supra* note 21.

³⁰ *Pushottam Shankar Ghodgaonkar v. Gaianan Shankar Ghodgaonkar*, (2012) 6 MLJ 648.

³¹ *Rakesh Kumar v. Pawan Khanna*, (2012) 195 DLT 341.

³² *Subhash Chander v. Shri Bhagwan Yadav*, (2010) 114 DJ 306.



whom the said document is put identifies his handwriting/signature or any writing/signatures of any other person on the said document or otherwise admits the said documents, the same poses no problem because then the document stands admitted into evidence.

Even if the witness denies the said document, it cannot possibly be said that the document should be returned to the party. If the document is so returned it will not be possible for the court to, at a subsequent stage, consider as to what was the document put and what was denied by the witness. In a given case, it is possible that the answer of the witness on being confronted with the document may not be unambiguous. It may still be open to the court to consider whether, on the basis of the said answer of the witness, the document stands admitted or proved or not and/or what effect is to be given to the said answer. Thus, the document cannot be returned and has to be necessarily placed on the court file.

The aim or intention of our legislator behind Order VII Rule 14(4), Order VIII Rule 1A (4), Order XIII Rule 1(3) of the Civil Procedure Code, is to bring an element of surprise in a case, which is essential in the process of the cross-examination of witnesses. If the document to demolish the case of the opponent is filed in the court record with pleadings it may hamper the case. On the contrary, if permitted to show/produce the document owing to the element of surprise, the adversary or witness may blurt out the truth. Once it is held that a litigant is entitled to such right, in my view it would be too harsh to make the same subject to the condition that the litigant would thereafter be deprived of the right to prove the said

documents himself. Thus, if the witness to whom the document is put in cross-examination fails to admit the document, the party so putting the document as its own evidence would be entitled to prove the same. However, the same should not be understood as laying down that such party for the said reason and to prove the said document would be entitled to lead evidence which otherwise it is not entitled to as per the scheme of CPC and evidence law.

However, the court should be cautious in this regard. It is often found that a party which has otherwise failed to file documents at the appropriate stage, attempts to smuggle in the documents in the evidence of the witness of the adversary by putting the documents to the witness whether relevant to that witness or not. Only those documents with which the witness is concerned and/or expected to know or answer ought to be permitted to be put to the witness in the cross-examination. If other documents with which the witness is not concerned are confronted only in an attempt to have the same filed and to thereafter prove the same, the court would be justified in clarifying that the document is taken on record only for the purpose of cross-examination and the producing party would not be entitled to otherwise prove the same, having not filed it at the appropriate stage.

CONCLUSION

The Code of Civil Procedure provides an extremely elaborated and explained set of codification that is to be applied in civil litigation to uphold the principles of natural justice. It may so happen some-time that fulfilling such word to word detailed procedural requirement of an underlying provision may become the cause to delay the judicial process. But any restlessness to speed



up the litigating process should not be allowed to become the reason to cause havoc to the fundamental rules of civil procedure.

Maintaining the sanctity of the principle of natural justice and the right of a free and fair trial, the pleadings and issues are formed with such objectives so as to make sure that a party who comes to a trial is well versed with the issues. Another reason for maintaining such objectives is to ensure that each side is prepared for the questions of law which are most likely to be raised and the parties have the proper opportunity to place relevant evidence before the court of law for its consideration. It has been repeatedly held in various cases that the pleadings are meant to give both sides some idea about what the opposite party presents as a case and helps courts to identify the real issue between the parties. Thus, preventing any unwanted deviation from the real issue during the course of a trial.

Significance of pleading is not limited only to satisfy the principle of procedural fairness as was observed by Mason J. and Gaudron J. in *Banque Commerciale SA v. Akhil Holdings*.³³ Pleadings play a very important role for admissibility and relevancy of one's evidence. As a case is dependent on the relativity between the evidence and the issue which is defined in one's pleading. Pleadings are the pegs on which evidence hangs.³⁴

It is fundamental to gather evidence in support of any legal position. Evidence plays a vital role in assisting a court to reach on a conclusion. It is important to keep in mind

that the decision-making capacity of the court is limited to the evidence produced before it; therefore, it becomes crucial for parties to produce as many relevant pieces of evidence as possible so that court is convinced beyond any reasonable doubt.

However, in doing so, evidence produced should be consistent with the pleading. A party cannot adduce evidence that sets the case inconsistent with the pleadings. No matter how valuable the role a piece of evidence plays, it can never overshadow the scope of pleadings which form the foundation of the case for the litigating party. Thus, when pleadings are silent on an issue, the parties should cease themselves from producing any evidence in regard to that issue. The court should also be extra-precautious while taking the evidence into account. Judge also should be well versed with the pleadings of the parties concerned to prevent any evidence to get admitted into records which is beyond the pleadings.

However, pleadings should be given a more modern and societal approach. While interpreting, it should be made sure that justice is not defeated just to please the technicalities. It may happen that the words used in a pleading limit the understanding of the case subject to the strict interpretation of the law. In such a case, it is the duty of the court to make sure that the correct substance of the pleading is determined. Instead of emphasising on the form, the substance of pleading should be considered. This means that whenever the question as to lack of pleading is raised, instead of going on its

³³ *Banque Commerciale SA v. Akhil Holdings*, (1990) 169 CLR 279 (Australia).

³⁴ Estcourt J, *Pleading Trips and Taps*, Tasmanian Government (Mar. 31, 2020, 22:57 PM),

<https://www.supremecourt.tas.gov.au/publications/speeches-articles/pleadings-tips-traps/>.



form, the court should ensure that the parties were aware of the case and the issues thus formed. If it so happens that the parties were aware of the case and moved to produce evidence in regard to the issues, in spite of the deficiency of the pleadings, then it is not open to the parties to raise the question of lack of appeal. As so observed by the Hon'ble Supreme Court in an exceptional case³⁵, where the parties proceeded to the trial being aware of the case and produced evidence not only in support of their own contention but in refutation thereof by the other side. In such an eventuality, it will not be open to submit to a mistrial and vitiate the proceeding even if there happens to be an absence of issue. A party may fail to or chose not to raise an objection when evidence beyond pleading is submitted and it comes on record. However, the court cannot oblivate itself from its duty and act upon such evidence. The court cannot proceed on the basis of the evidence not pleaded. In the situation of absence of pleading on any ground, evidence given in that regard is of no use. This is an established principle. As held in *Rajgopal v. Kishan Gopal*³⁶ that when there is no pleading regarding certain issues, no finding can be given despite being evidence.

Therefore, in the view of the above, it is clear beyond any reasonable doubt that the party must plead all the material facts and support it with sufficient evidence. The courts do not have the liberty to go beyond pleadings and issues cannot be formed unless pleadings raise any controversy regarding any law or fact. In the same manner, the court should keep an extra eye on the evidence so that no

party can lead any evidence, not in line with pleadings.

³⁵ *Kalyan Singh Chouhan v. CP Joshi*, (2011) 2 SC 44.

³⁶ *Rajgopal v. Kishan Gopal*, AIR 2003 SC 4391.