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# The Future of Complaint Filed on the Last Day of Limitation without Affidavit

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## ABSTRACT

*This article seeks to analyze the legal ramifications that arise when a complaint is filed on the last day of limitation without the accompanying affidavit, a procedural requirement under civil litigation in India. This study will analyze whether such a filing could be reckoned as valid for purposes of limitation and what, if any, curative steps are available under law. The paper will analyze related provisions of statutes, judicial precedents, and procedural provisions to ascertain what would be the consequence of an affidavit having not been filed on the commencement of a suit. It will argue that a complaint lacking an affidavit would be procedurally defective.*

## I. INTRODUCTION

The Complaint is the starting point of a suit or we can say that filing of complaint is the first stage of legal proceedings on civil or commercial matters. There is no definition of “complaint” in the Code. Nonetheless, it can be considered a statement of claim, a document that is presented in order to begin a lawsuit. Its purpose is to outline the justifications for the plaintiff's request for the court's help. It is the plaintiff's pleading.<sup>3</sup> A Complaint is instituted by filing it at the filing counter of court, at the filing counter the clerk would provide you with a Case Number Record (CNR) which is unique for every complaint. The complaint at the filing counter has to be filed in duplicate<sup>4</sup>. Then you have to appear before the court which would be displayed on the Notice board. Suit number would be given and office objections would be raised against the complaint. After reviewing the entire complaint, the court must determine whether it should be accepted or rejected in exchange for granting some form of reparation.<sup>5</sup> The plaintiff has to make the correction within 7 days. After the corrections are made summons order would be issued against the defendant and then the plaintiff has to pay the court fees with copy of complaint on plain paper<sup>6</sup>. This in practice is

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<sup>3</sup> Civil Procedure Code with Limitation (CPC) by C.K. Takwani - Eastern Book Co – 9<sup>th</sup> Edition

<sup>4</sup> Narender Kumar, “Key to Civil Court Practice and Procedures” 4<sup>th</sup> Edn Lexis Nexis

<sup>5</sup> George S. K., “Grounds for Rejection of Complaint in India” (2020) 7 Ct Uncourt 34 <https://heinonline.org/HOL/P?h=hein.journals/counco7&i=86>

<sup>6</sup> Sarkar: Civil Court Practice & Procedure Manual, 14<sup>th</sup> Edn

mostly done at the first day.

Every lawsuit assumes that there is a cause of action against the defendant since the plaint must be dismissed if there isn't<sup>7</sup>. They relied-on Cooke v. Gill in *Alchemist Ltd. and Another v. State Bank of Sikkim and Another*<sup>8</sup> for explaining what a “cause of action” is? Lord Brett noted that the “*cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.*”

The requirement that the plaint specify the date on which the cause of action originated is meant to assist the court in determining whether or not the claim is barred by limitation. The court will reject the plaint if it seems from the statements in the plaint that the claim is prohibited by any legislation<sup>9</sup>. For example, if the plaint fails to state that a “notice” as required by Section 80 of the Code has been given, it will be rejected under this clause. However, if the plaintiff pleads a waiver of such notice, the court cannot reject the plaint without giving them a chance to prove it<sup>10</sup>. Similarly, the plaint may be dismissed if it demonstrates that the claim is precluded by limitation.

The court has the responsibility to properly review the plaint before a suit is filed, determine whether it should be dismissed or returned, and determine the reason for dismissal. The courts have a duty to analyze various materials as well as circumstances in which the plaint should be dismissed.<sup>11</sup>

As already stated, the plaint has to be filed within a proper format, this duty of filing it properly has been increased by way of an amendment i.e. Code of Civil Procedure (Amendment) Act 2002. The amendment inserted Section 26(2) and Order VI Rule 15 and 15(4). These provisions now require the plaint to be accompanied by an affidavit as provided in Section 26(2) and the person verifying the pleadings to furnish an affidavit in support of the pleading [Order 6 Rule 15(4)]. In the case of *Salem Bar Advocate Association, Tamil Nadu v Union of India*<sup>12</sup> these amendments were challenged. The court held that it was contended that the pleadings must already be verified therefore the necessity to provide an affidavit is illegal. The court held that they don't agree to this proposition. According to Order 6 Rule 15(4) of the Code and revised Section 26(2), the affidavit that must be filed imposes additional obligation on the deponent

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<sup>7</sup> Laxman Prasad v Prodigy Electronics Limited and Another (2008) 1 SCC 618

<sup>8</sup> (2007) 11 SCC 335

<sup>9</sup> Divnoor Samra, 'Studying Grounds of Plaint Rejection: Order VII Rule 11 and Judicial Interpretations' (2024) 7 Int'l JL Mgmt & Human 2394 <https://heinonline.org/HOL/P?h=hein.journals/ijlmhs32&i=2412>

<sup>10</sup> Sawai Singha Nirmal Chand v Union of India AIR 1966 SC 1068.

<sup>11</sup> Order VII Rule 11 CPC

<sup>12</sup> (2005) 6 SCC 344

about the veracity of the facts presented in the pleadings. Nonetheless, it is made plain that such an affidavit would not be admissible in court. When the pleadings are amended, a new affidavit must be submitted in support of the amended allegations.

Since the amendment and the Salem case has made it mandatory to file an affidavit with the plaint. It raises a crucial question: *firstly*, what happens to the plaint if the affidavit that is needed by Order VI Rule 15(4) and Section 26(2) of the Code is not filed with it? *Secondly*, what happens where the plaint was filed on the last day of the limitation period without the accompanying affidavit, this question assumes enormous relevance. There is a chance that the Court will consider the plaint to be flawed or improperly instituted in this case.

## II. FIRST SITUATION: PLAINT FILED WITHOUT AN AFFIDAVIT

The Civil Procedure Code, 1908, explicitly specifies in Section 26(2) that “*in every plaint, facts shall be proved by affidavit.*” At the time of commencing the claim, he must provide an affidavit proving the facts pleaded in the plaint; this is implied by the word “shall” being necessary rather than directory. This required clause states that the party pleading must provide an authenticated statement under oath that details the facts and circumstances supporting the pleading. The affidavit must be clearly attached to the plaint at the time of filing, and its absence would constitute a failure to comply with the statutory requirement under Section 26(2) read with Order VI Rule 15(4) of the CPC.

However, in the case of *Bhakti Hari Nayak v. Vidyawati Gupta*<sup>13</sup>, the issue determined by Calcutta High Court was the validity of a plaint without an accompanying affidavit in law. The Court then held that the plaint, not containing the affidavit required by Order 6 Rule 15(4), would not be said to be duly instituted. The reason was that until such time an affidavit is filed, there is no legal existence of the suit. Hence, it was concluded that the plaint is “non est” in law until such time the defect is cured. Also, the Court stated that the date of such curing will be the date of institution of the suit. This view makes it clear, however, that compliance does not take retroactive effect. In other words, the legal institution of the plaint starts only after the date on which the defect is cured and not from the original date of filing. This understanding finds its base in the statutory scheme as mentioned in Order IV Rule 3, which governs the institution of suits.

Order IV Rule 3 holds that if a plaint does not meet the procedural requirement or mandate at the time it is placed on the court, it would not satisfy the requirement of due Institution under

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<sup>13</sup> (2005) 2 CHN 575

the Code. The court indicated that any interpretation allowing such rectification to operate so as to date back to the original date would be clearly against the language and the intent behind Order 4 Rule 3. Hence, it is abundantly clear that the legal formalities must be met at the threshold, and there cannot be any retrospective validation by the courts in case of non-compliance under the banner of procedural consideration.

However, pertaining to the matter where such defects are raised with respect to rejection of the plaint under Order 7 Rule 11, nuanced view has been accorded by some other courts. For instance, the case *Mrigendra Pritam Vikramsingh Steiner v. Jaswinder Singh*<sup>14</sup>, the Delhi High Court declaimed that such matters, for example, absence of verification or affidavit, are procedural lapses capable of being cured. The deficiencies may be such, though mandatory, do not go to the roots of cause of action, making it unfair to dismiss the suit at the stage of initiation. It further reaffirmed that it is the purpose of procedure to promote the ends of justice, and not to defeat them on mere technicalities. And that typically, where a plaint is initially defective by reason of the absence of an affidavit or indeed verification, courts are expected to allow the plaintiff to remedy the defect and not reject a suit on that score.

In the case of *K.K. Ramachandran Master v. M.V. Sreyamakumar*<sup>15</sup>, the Supreme Court ruled that errors in verification or failure to file an affidavit are of a curable nature. Citing previous rulings like *F.A. Sapa v. Singora* and *Sardar Harcharan Singh Brar*, the Court clarified that these errors do not require the dismissal of the plaint but rather should be addressed during the trial phase. Such evidence was contested even in relation to election law proceedings under the Representation of the People Act, and it was pointed out that the basis of dismissal under Section 86 was not presupposed by Section 83 of the Act. The analogy then is that procedural lapses, however severe, and statutory, are by and large, within a curative lens.

Therefore, that leads us to say that while the requirement of an affidavit is obligatory, Indian courts have elegantly reconciled the Order VI Rule 15(4) affidavit requirement with the merits of the case under consideration. The law now prescribes that every plaint must be supported by an affidavit, but the simple absence of such an affidavit does not ipso facto invalidate the suit. In most cases, the courts prefer to allow the plaintiff to either file the affidavit or remedy the omission rather than dismiss the case for want of it. Only where a plaintiff continues to neglect or willfully disregard this requirement can the plaint be struck under Order VII Rule 11. This rule strikes a balance between procedural requirement and substantive justice so that plaintiffs

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<sup>14</sup> 2010 SCC OnLine Del 3952

<sup>15</sup> (2010) 7 SCC 428

will not suffer for technical irregularities.

### **III. SECOND SITUATION: PLAINT FILED WITHOUT AN AFFIDAVIT ON THE LAST DATE OF THE LIMITATION PERIOD.**

The question arises as to whether the failure to lodge a mandatory affidavit along with a plaint on the last day of limitation would render the suit liable to be dismissed as time-barred. I believe that if an affidavit is a prerequisite imposed by any law, be it the Code of Civil Procedure or a special enactment, its non-production at the time of filing would render void the suit so instituted. In the case of *Somanathasa Baddi v. Chanabasappa*<sup>16</sup>, the court held that according to Section 27(2)(r) of the Rent Control Act, if the plaint is filed with an affidavit that the landlord wants to use the premise for its own purpose or for some family member depended on him, then it would be presumed that he want it for that purpose but in the present case verification certified by administrative officer can't be deemed as an affidavit therefore the presumption would not be raised in this matter. Consequently, if a suit is filed on the last day of limitation without that procedural requirement, it cannot be said to be instituted in time at all. In this regard, the Hon'ble Supreme Court decisions *Amar Chand Inani v. Union of India*<sup>17</sup> shall offer precedence.

The incident in which the plaintiff was injured occurred on January 1, 1958, and the plaintiff filed a claim for compensation against the Union of India. By then, the law, Article 22, Indian Limitation Act of 1908, had set a one-year limit for the filing of suits of this category. But before the institution of any proceedings, Section 80 of the Code of Civil Procedure provided for a two-month notice to the government. The plaintiff duly issued a notice to the government on December 29, 1958, and thereafter promptly instituted this suit on the following expiry of the notice period on March 2, 1959. The suit was instituted in the Karnal Court, which was later held to have no territorial jurisdiction over it. The plaint was then returned and was re-presented in the Ambala Court on October 29, 1959.

The plaintiff claimed that since March 1, 1959, was a Sunday, the filing of the suit in the Karnal Court the following day should be taken as timely under Section 4 of the Limitation Act. As to that allegation, he raised another contention under Section 14 relating to the exclusion from the total time of the spendings in the courts at Karnal and Panipat. However, the above arguments have been turned down by the Supreme Court. According to it, Section 4 could not save a suit filed in a court which is not competent to take cognizance of it because the benefit under Section 4 is only in respect of filing in a competent court. Concerning Section 14, the Court maintained

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<sup>16</sup> (2008) 10 SCC 685

<sup>17</sup> AIR 1973 SC 313

that even excluding the period spent in prior proceedings, the initial filing in the Karnal Court was already beyond the limit when calculated in accordance with the provisions.

One straightforward principle that emerges from the reasoning of the Court is that for a suit to be validly instituted within limitation, all the procedural requirements must be complied with at the time of filing. The mere act of filing a plaint does not validly institute a suit in law. A suit filed in a court that is not competent to hear it or one that does not conform to some other procedural condition precedent cannot, for the purposes of limitation law, be considered as having been validly instituted.

This reasoning analogy can be extended to scenarios where filing a statutory or mandatory procedure for affidavit submission is invoked, for example, under Order VI Rule 15(4) of the Code of Civil Procedure, every pleading is required to be verified through an affidavit. Affidavits are an essential part when it comes to instituting a commercial suit. They do not constitute mere formalities but rather an essential part of the process whereby the jurisdiction of the court is invoked in a legally valid manner. Therefore, such an omission amounts to an incomplete institution of the suit if this affidavit is not filed on the last day of limitation.

Permitting the affidavit to be filed at a later stage would, in fact, enable the plaintiff to exceed the limitation imposed by law and undermine the entire rationale of limitation statutes, which are supposed to provide certainty and finality with which litigation should end. The Supreme Court in *Amar Chand Inani* rejected attempts of this kind to invoke any equitable or curative doctrines for overcoming statutory deadlines. It has been made clear in the judgment that even where the law prescribes procedural requirements, those should be fulfilled strictly, more so when limitation is involved. In like manner, the failure to file a mandatory affidavit should be taken as the filing of a suit in a court lacking jurisdiction, which was held not to satisfy the legal requirement for instituting a suit in time. Defects cut to the root of institution and not merely technical. Hence, a suit filed without an affidavit on the final day of limitation should be treated as time barred, because institution is legally incomplete until an affidavit is filed, after which the limitation period would have already expired.

This was the reason for which the litigants are expected to come to court duly and in full conformance with the statutory procedure. It is also a form of judicial discipline while applying limitation law uniformly and in fairness. Considering the binding verdict in *Amar Chand Inani*, I am humbly saying that without an affidavit a plaint file on the last date of the limitation period may be rejected by the court of law as it is time barred.

#### **IV. CONCLUSION**

Particularly when the plaint was submitted on the last day of the statute of limitations, an affidavit must be filed in accordance with Section 26(2) and Order VI, Rule 15(4) of the Code of Civil Procedure. Court rulings, particularly in *Bhakti Hari Nayak* and *Amar Chand Inani*, recall that the institution of the suit should be preceded by adherence to all legislative requirements that are on file at the time of filing, rather than just physically filing the documents. Where such requirements are not satisfied, particularly with respect to an affidavit being mandatorily required to be presented, in the eyes of the law, the suit remains incomplete, and any rectification afterwards cannot take effect from the date of its original presentation.

Although courts have typically taken a corrective stance when it comes to procedural errors, this leniency does not apply in situations where the law of limitations is directly at play. At the core of the suit's maintainability are procedural flaws that impact the statute of limitations. The litigation is barred by limitation if the affidavit is submitted after the last day of the limitation period and is not filed with the plaint. This is due to the fact that a lawsuit is only deemed officially filed when all formalities are fulfilled at the moment of filing. The goal of limitation statutes, which are in place to provide finality, avoid stale claims, and maintain procedural discipline in the legal system, would be undermined by any leniency in this area.

It is crucial to remember that Indian jurisprudence is still unsure of the precise legal position with regard to a plaint filed on the last date of limitation without the necessary affidavit. The Supreme Court has not made a definitive ruling that directly resolves this matter. Therefore, it is wise to wait for a definitive and unambiguous decision from a constitutional court to eliminate any ambiguity and guarantee uniform implementation of the law across jurisdictions in the absence of a uniform or binding interpretation. Therefore, even while the majority of interpretations tend to be tight compliance, particularly when it comes to limitation, the last word on this matter has not yet been pronounced. Until then, attorneys and plaintiffs should move cautiously and consider filing an affidavit as a necessary step in bringing a viable claim within the allotted time frame.

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