



**JUDICIARY**

# ALL JUDICIARY EXAM

Tansukh Paliwal (Linking Sir)

# CIVIL ORDER WRITING



3/12/21

## What is Order?

ORDER  
↓  
Direction  
(Formal)

Section 2(14) of the CPC defines "Order" as a formal expression of any decision of a civil court which is not a decree.

### Note :-

1. Order do not usually bring the suit to an end but help in deciding some procedural issues.
2. a Civil Judge has to pass many orders in the life of a civil case
3. No rigid format for a civil order.

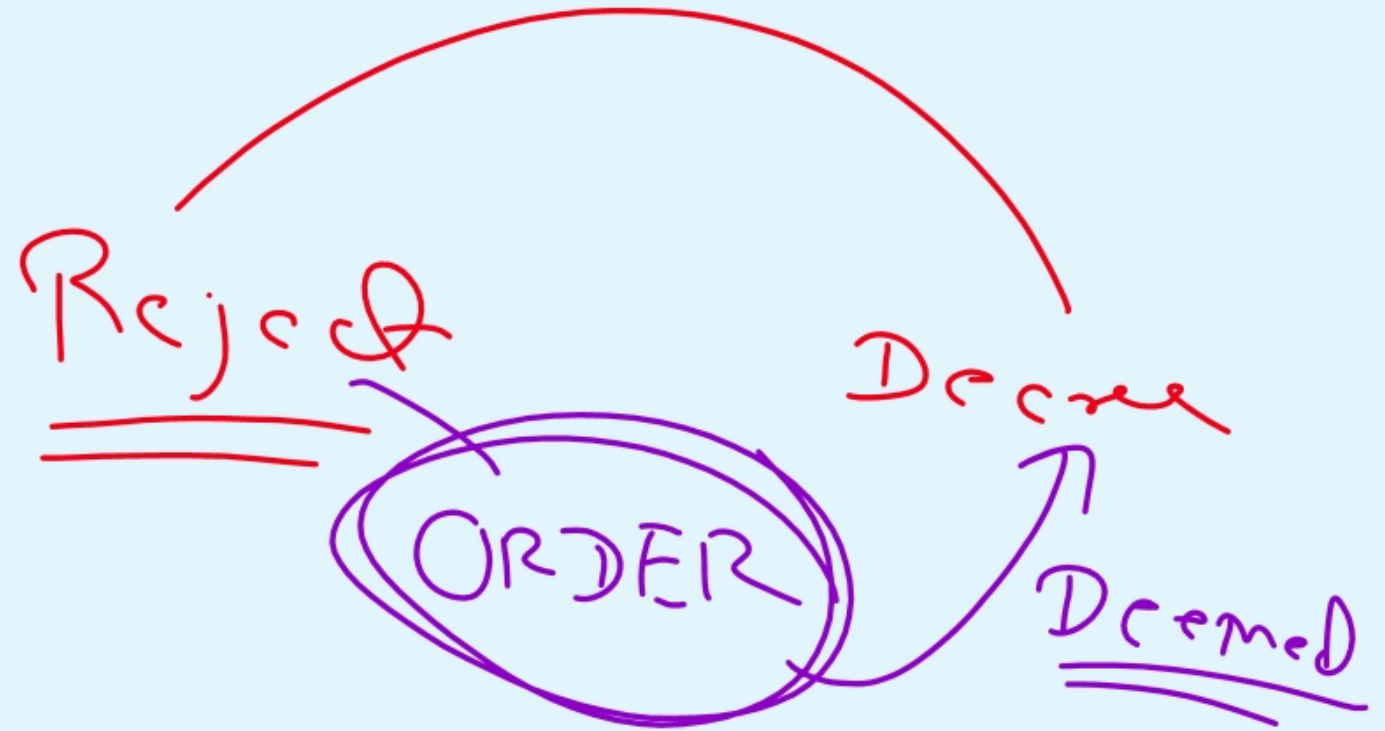


## "Order" in CPC : some examples:

O.7  
R.11

O.1, R.10

- Decision of a court rejecting a plaint (Order VII, Rule 11) [Although, this particular order of rejection of a plaint is a **deemed decree** by the virtue of Section 2(2), but more on that some other day!].
- Decision of a court allowing parties to amend their pleadings (Order VI, Rule 17).
- Decision of a court permitting the addition/removal of parties to the case (Order I, Rule 10). O.39
- Interim injunctions, appointment of receivers, and many more.





## Points to be kept in mind, while drafting order

Relief

1) Analyse what exactly is the party seeking from the court, in the problem given before you,

2) Whether party entitled to that relief under the law?

GTS  
Local

3) Identify the applicable provision and check whether ingredients of the provision are met. E.g. For instance, if a party is seeking an injunction, examine as to whether it has a prima facie case? balance of convenience or inconvenience lies in favour of the party asking for the relief?

Impossible Injury



- 4) Remember, Every application every provision in the CPC, has an object, a purpose.
- 5) Understand the "degree of proof" required for allowing an application. This "degree of proof" may vary for different applications.

*O.S.R. 7*

*WORD Selection*

6) a <u>good cause</u> for non-appearance" (Order IX, Rule 7). Whereas, in a suit which has been dismissed for non-appearance.	7) The order of <u>dismissal</u> can be set aside, only if the plaintiff satisfies the court as to <u>"sufficient cause"</u> for their
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	non-appearance" (Order IX, Rule 9)
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8) Please note the difference between words like good cause and sufficient cause.

9) Explain Reason for Delay :  
Certain applications are allowed till a certain period only.



### For Example :-

→ an application for amendment of pleadings "shall not be allowed after the trial has commenced" unless party satisfies the court that despite due diligence, it could not have raised the matter before commencement of trial. (Order VI, Rule 17).

→ Counter claims are non-entertainable, normally, beyond a particular stage. (Order VIII, Rule 6A).



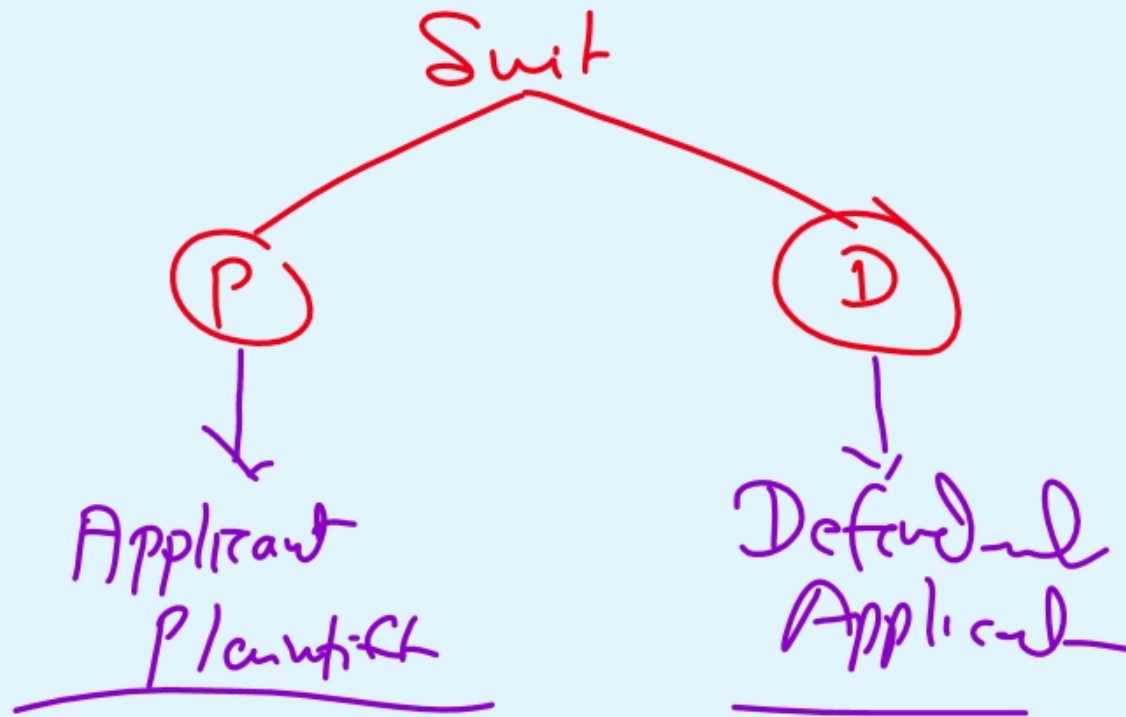


## Format of Civil Order :

*Formality  
Clause*

*3-4*

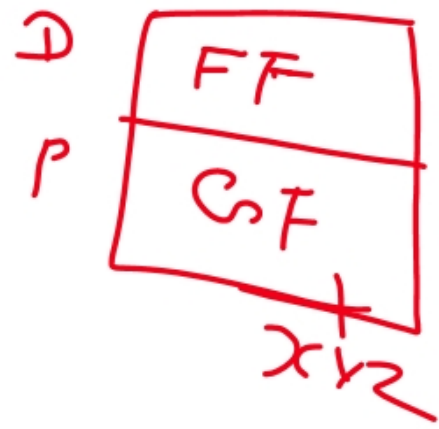
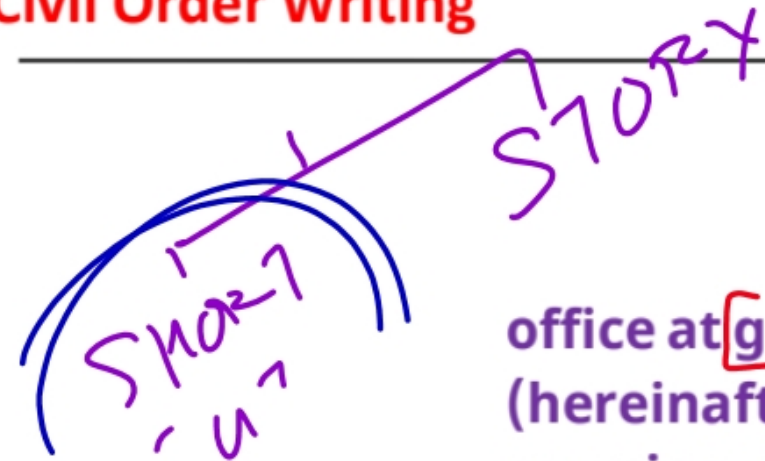
<b>1</b>	<b>General Details of case &amp; court</b>	<ul style="list-style-type: none"><li>• <u>title</u> of the court passing the order,</li><li>• <u>suit details</u>,</li><li>• <u>description of parties</u>,</li><li>• <u>counsel's name</u>.</li></ul>
<b>2</b>	<b>Nature of Application</b>	What type of application presented or asked
<b>3</b>	<b><u>Factual background</u></b>	Mains facts of the suit
<b>5</b>	<b>Applicant Arguments</b>	Grounds of objection by other parties



# Civil Order Writing

6	Respondent Argument	Grounds of objection by other parties
7	Issues <i>विवाद</i>	On what points, they are at variance? Each such variance is an issue.
8.	Legal Provision	Condition or ingredients of relevant provisions
9.	Order (Conclusion)	Allowed or disallow with reasoning remark
10	After Order	<u>"Order announced in the open court today i.e. followed by the signature, name, designation of the Judge &amp; the Court's name"</u>

*Ordering Formality*



## Practical Exercise :-

XYZ Ltd (Plaintiff) is a company having office at ground floor of the property Surat, Gujarat (hereinafter referred as 'suit property') and carrying on business of sale of cloths material . Defendant is occupying the entire first floor of the suit property and has been carrying on the business of sale of colour chemicals.

The premises under the possession of defendant consists of two washrooms which are being used by the customers of the defendant.



## Civil Order Writing

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The portion under the ownership and possession of the plaintiff got damaged due to flow from the faulty drainage system as well as water pipes fitted in the portion under the occupation of the defendant. Flow has also caused damage to walls, ceiling fans and raw material. Plaintiff had informed the defendant regarding the damage but the same went overlooked. Plaintiff waited for the repairs to be carried out by the defendant but the defendant did not get the repair work done. Thereafter, plaintiff got the repair work done and spent approx. Rs. 2,00,000/-. Consequently, the present suit was instituted by the plaintiff seeking



direction for the defendant to take appropriate & necessary action for repair of their washrooms so as to prevent the further damage to the property of the plaintiff & for compensation of Rs. 2,00,000/-.. Instead of filing the Written Statement, defendant moved an application under Order VII, Rule 11(a), CPC averring that the suit filed by the plaintiff is manifestly vexatious, meritless & plaintiff has miserably failed to show any cause of action in his favour. Plaintiff has not filed any bills with the plaint to prove the alleged expenditure by the plaintiff. Also, no photographs have been annexed with the plaint to show the damage caused to

plaintiff's property. Defendant prayed that the plaint of the plaintiff is liable to be rejected under Order VII, Rule 11(a), CPC as it does not disclose any cause of action.

Plaintiff in his reply to the application filed by the defendant stated that plaint of the plaintiff discloses a cause of action in his favour. The present application of the defendant is an abuse of the process of law and the same should be dismissed with heavy cost.

NATURE

### Suggested Answer of Civil Order : ORDER

1. By this Order, I decide an application under Order VII, Rule 11, CPC moved by the defendant Applicant seeking rejection of the plaint.  
*Applicant*
2. Defendant, prayed that the Plaintiff has no case and the plaint is liable to be rejected under Order VII, Rule 11(a), CPC as it does not disclose any cause of action. In order to make out a case of rejection of the Plaint, Defendant states:
  - i. That the Plaintiff has not filed any document with the plaint to prove the alleged expenditure by the Plaintiff;



ii. That the Plaintiff has not annexed any photographs to show the damage allegedly caused to his property.

3. The Plaintiff Respondent argues while opposing this application that the present application is an abuse of the process of law. He argued that a legally justifiable cause of action is clearly discernible from his plaint and documents. The Defendant has filed the present application purely with a view to delay the case and the same should be dismissed with heavy cost.

Visible

4. Arguments heard at length and record perused.



Legal Provision

5. Before deciding the present application, let us take a quick look at the law on the subject -

Order VII, Rule 11, CPC is the provision under consideration here. Order VII, Rule 11 provides an opportunity to the Defendant to present a threshold challenge to the very maintainability of a suit (as opposed to sustainability, which merits a trial). The Defendant, in cases of a patently meritless plaint, may apply for rejection of the plaint, and avoid being subjected to the rigmarole of a protracted entire trial.

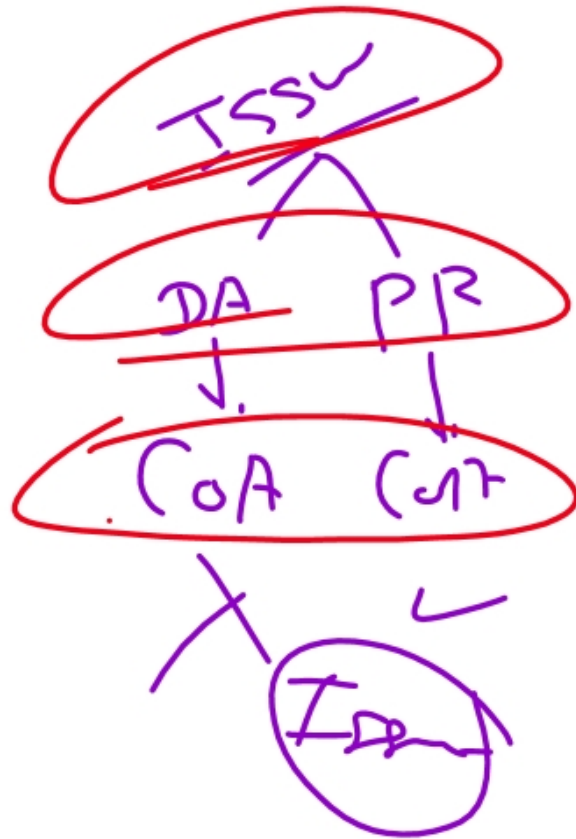
Given the fact that such challenges are in the nature of threshold challenges, while deciding an

application seeking rejection, the Court has to confine itself to the averments in the Pleat and cannot travel beyond that. The Court is not supposed to scrutinize and appreciate evidence, or test the evidence set up by the Defendant. This is simply because the Court cannot conduct a mini-trial (before a trial) and test the case meticulously at an initial stage. The Court has to, therefore, confine itself to an examination of the pleat alone.

There is no provision of Mini Trial before  
Main Trial.

Rejection of a pleat can be sought on many grounds, one of them being: non-disclosure of a cause of action (Order VII, Rule 11(a), CPC). This is the ground which is canvassed by the Defendant in the present case.

6. To make his submission good, Ld. Counsel for the Defendant argued that the Plaintiff has neither placed on record the photographs of the premises which show that the damage has been caused to the portion of the Plaintiff nor has he adduced any bills to show the amount spent by him to carry out the necessary repairs. He further argued that Order VII, Rule 1, CPC makes it clear that - plaint shall contain "facts constituting the cause of action". Such facts are missing in the present plaint.



The above submission, in this Court's opinion, is not tenable.



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7. In this case, if the plaint is looked at- in isolation, it reveals facts which constitutes the cause of action. Facts in the plaint such as "That the property of the Plaintiff got damaged due to flow from the faulty drainage system & water pipes fitted in the property of the Defendant. Flow has also caused damage to walls, ceiling fans and the raw material". Plaintiff had informed the defendant regarding the damage but the same went overlooked. Plaintiff waited for the repairs to be carried out by the defendant but the defendant did not get the repair work done." Without commenting on the merits of these claims, these averments clearly disclose a cause of action.

8. Cause of action, as well established, is a bundle of facts, necessary for a plaintiff to prove to get a decision in his favour. It does not comprise the evidence necessary to prove the bundle of facts. All of that is a matter of evidence and trial. Defendant's argument that there is no evidence to substantiate the cause of action, is not something this court can get into, at this point. The same is a disputed question of fact and, consequently, a matter of trial. The Court cannot conduct a trial before a trial at this stage and prejudge the Plaintiff's case.

FIX

9. In view of the aforesaid discussions, the application moved on behalf of the defendant stands dismissed.

Allow / Dismiss

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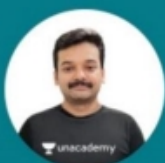
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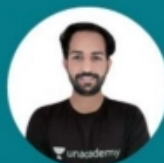
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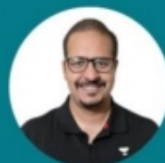
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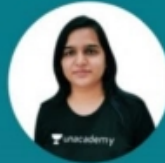
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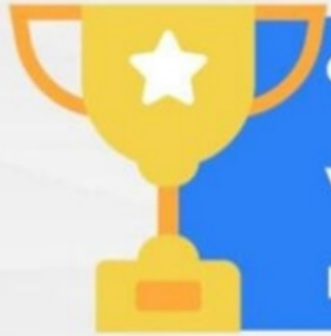
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