

# **Return of Plaint Order 7 Rule 10 CPC**

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# Introduction

The provision regarding the return of plaint are provided under the Order 7 Rule 10,10A,10B CPC 1908.

The court, if it found that it does not have jurisdiction in the suit, can return by an order that the plaint to be presented in the proper court. The defect of jurisdiction can be Territorial , Pecuniary or Subject matter.

# Procedure for Returning the Plaint

The procedure for returning the plaint depends upon two circumstances:-

**Case 1** – Where the court in the initial hearing identify that it does not have the jurisdiction to try the case and it feels that the plaint needs to be returned.

In this case, the *Order 7 Rule 10(2) CPC* mandates the court to endorse the following particulars on the plaint:

1. Date on which the plaint was initially presented.
2. Date on which the plaint is being actually returned.
3. Name of the party which presented the Plaint.
4. Reasons for returning the Plaint.

**Case 2** – Where the defendant has appeared and after which the court believes that the suit needs to be returned for lack of jurisdiction.

*Order 7 Rule 10A CPC* mandates the procedure that needs to be followed while returning the suit:

1. The court must intimate the plaintiff through registered post or any authorized manner that the suit is to be returned for lack of jurisdiction.
2. Plaintiff needs to appear before the court either personally or through his counsel.

3. The plaintiff is required to inform the court as to where the plaintiff proposes to file the new plaint after it is returned by this court.
4. The court may fix the date of appearance of plaintiff and defendant before the competent court where the new plaint is to be filed.
5. The court may, at the request of the plaintiff, serve notices to the plaintiff and defendant requiring them to appear before the competent court and intimating them of the return of plaint.

# GR Civil – Rule 39

## 39. Return of Vakalatnama with plaint –

When a plaint is returned to a pleader or recognised agent of the plaintiff, the authority executed in his favour shall also be returned to him.

When returning a plaint for presentation to proper court a court may order the plaintiff to file a copy of the plaint to be put on record in place of the plaint.

# Appeal Against Return of Plaint

A plaintiff can file an appeal from the order under Order 7 Rule 10. Such appeal is maintainable under Order 43 Rule 1(a) of CPC.

But where the plaint was returned on an application made by the plaintiff under Order 7 Rule 10A(2) CPC, such appeal is not maintainable under Order 7 Rule 10A(5) CPC.

# Power of appellant court to transfer suit

According to *Order 7 Rule 10B(1)CPC*, Where on an appeal against an order for the return of plaint, the court hearing the appeal confirms such order, the court of appeal may, if the plaintiff by an application so desires, while returning the plaint, direct plaintiff to file the plaint, in the court in which the suit should have been instituted and fix a date for the appearance of the parties then it shall not be necessary for the court in which the plaint is filed to serve the defendant with the summons unless that court in which the plaint is filed, for reasons to be recorded, otherwise directs.



# After returning at which stage suit will start

*In Joginder Tuli vs. S L Bhatia(1997)1 SCC 502*  
It was held that the suit should be proceeded from that stage at which the suit stood transferred.

But in *ONGC Ltd vs Modern construction and Co. (2014) 1 SCC 648* It was held 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 7 Rule 10 CPC 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 and case before the court

having no jurisdiction in view of the provisions of *Sec 14 of the Limitation Act*, and may also seek adjustment of court fee paid in the 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 (from the beginning) even if it stood concluded before the court having no competence to try the same.”

Conflict between above two division bench decisions, matter was referred to larger bench and in **EXL Careers vs Frankfinn Aviation Services pvt Ltd 2020 SCC online SC 62**

It was held that After return of plaint and its presentation before the court of competent jurisdiction ,the plaint is to be considered as a fresh plaint and the trial is to be conducted afresh even if it stood concluded before the earlier court.

Whether dismissal of an application under Order 7 Rule 10 of CPC finally settles the issue of lack of territorial jurisdiction?

The Delhi High Court in the matter of *M/S Mayor Apparel Ltd vs M/S Panchanan International Pvt Ltd* decided on 11/03/2020 held that an application under Order 7 Rule 10 CPC is disposed of by considering the plaint only and not the written statement and therefore, the parameters for deciding such an application and for framing of issues are totally different.

The Delhi High Court reiterated that it is a settled position of law that an application under Order 7 Rule 10 CPC is disposed of by considering the plaint with a demur. The defence of the defendant in the written statement is not to be taken into account while deciding such application. The court held that since the plaintiff had averred that cause of action had arisen within the territorial jurisdiction of trial court and the defendant had specifically denied the same, an issue was liable to be framed on the question of territorial jurisdiction of the trial court.

# Conclusion

Therefore, it can be said, that jurisdiction of the court is necessary and primary condition, to obtain adjudication and , the decision of the court without jurisdiction is a nullity in the eyes of the law, and not binding of anyone, though this is subject to the exceptions of section 21 of CPC i.e. No objection regarding

Jurisdiction shall be allowed by any appellate or revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

*THANK YOU.*