

## FAQs ON SUMMARY SUITS IN INDIA



The Code of Civil Procedure, 1908 (**CPC**) consolidates and amends the laws relating to the procedure to be followed in civil and commercial disputes in India. The CPC prescribes institution of two kinds of suits in a civil court: (i) ordinary suits; and (ii) summary suits. Summary suits have been introduced in the CPC to settle commercial disputes by a swift redressal mechanism.

In this primer, we discuss the procedure relating to summary suits under CPC.

**1. What are summary suits?**

In summary suits, courts adopt a summary or a truncated procedure to decide the case and grant a decree, if the defendant has no reasonable defense. The underlying difference between summary suits and ordinary suits is that in summary suits, the courts do not necessarily hear the defense of the defendant before passing a judgment, unless the defendant is permitted to do so by the court.

**2. Where can summary suits be instituted?**

A summary suit is instituted at the court of first instance such as the District Courts or High Courts having original jurisdiction.

**3. Which court will have jurisdiction to hear and decide the suit?**

A suit is instituted at the place:

- where the defendant resides; or
- where the defendant carries on business or personally works for gain; or
- where the cause of action wholly or partly arises.

After determining the territorial jurisdiction, the value of the suit is required to be considered for the purpose of determining which court will hear the matter. This is also known as pecuniary jurisdiction. Different States in India have notified different pecuniary jurisdictions, as indicated in the table below:

<b>Territorial jurisdiction</b>	<b>Pecuniary Jurisdiction</b>	<b>Value of suit</b>
<b>Mumbai</b>	Civil Court	below INR 10,000,000
	High Court	INR 10,000,000 and above
<b>Delhi</b>	Civil Court	below INR 20,000,000
	High Court	INR 20,000,000 and above

**4. What are the classes of suits that can be tried summarily?**

The procedure of summary suits is applicable to matters which deal with specified documents such as bills of exchange, hundis, and promissory notes. Further, summary procedure is applicable to suits for recovering a debt or liquidated demand for money arising out of a written contract, an enactment or a guarantee.

**5. What is a bill of exchange?**

A bill of exchange is a written unconditional order by one party to another to pay a certain sum either immediately or on a fixed date for payment of goods and/or services received.

**6. What is a hundi?**

A hundi is an unconditional order in writing made by a person directing another to pay a certain sum of money to a person named in the order. Hundis are used in trade and credit transactions.

**7. What is a promissory note?**

A promissory note is an instrument in writing whereby one party promises to pay a certain specified sum of money on a specified date or on demand of the payee.





**8. What is liquidated demand for money?**

Liquidated demand is a demand for a fixed sum of money which is pre-determined. It is distinguished from an unliquidated claim for money, which is subject to the discretionary assessment of the court.

**9. What is a plaint?**

The proceedings before the court are initiated by an aggrieved party by filing a 'plaint'. A plaint is a written description of the facts of the case and the reliefs sought from the court.

**10. What is "leave to defend"?**

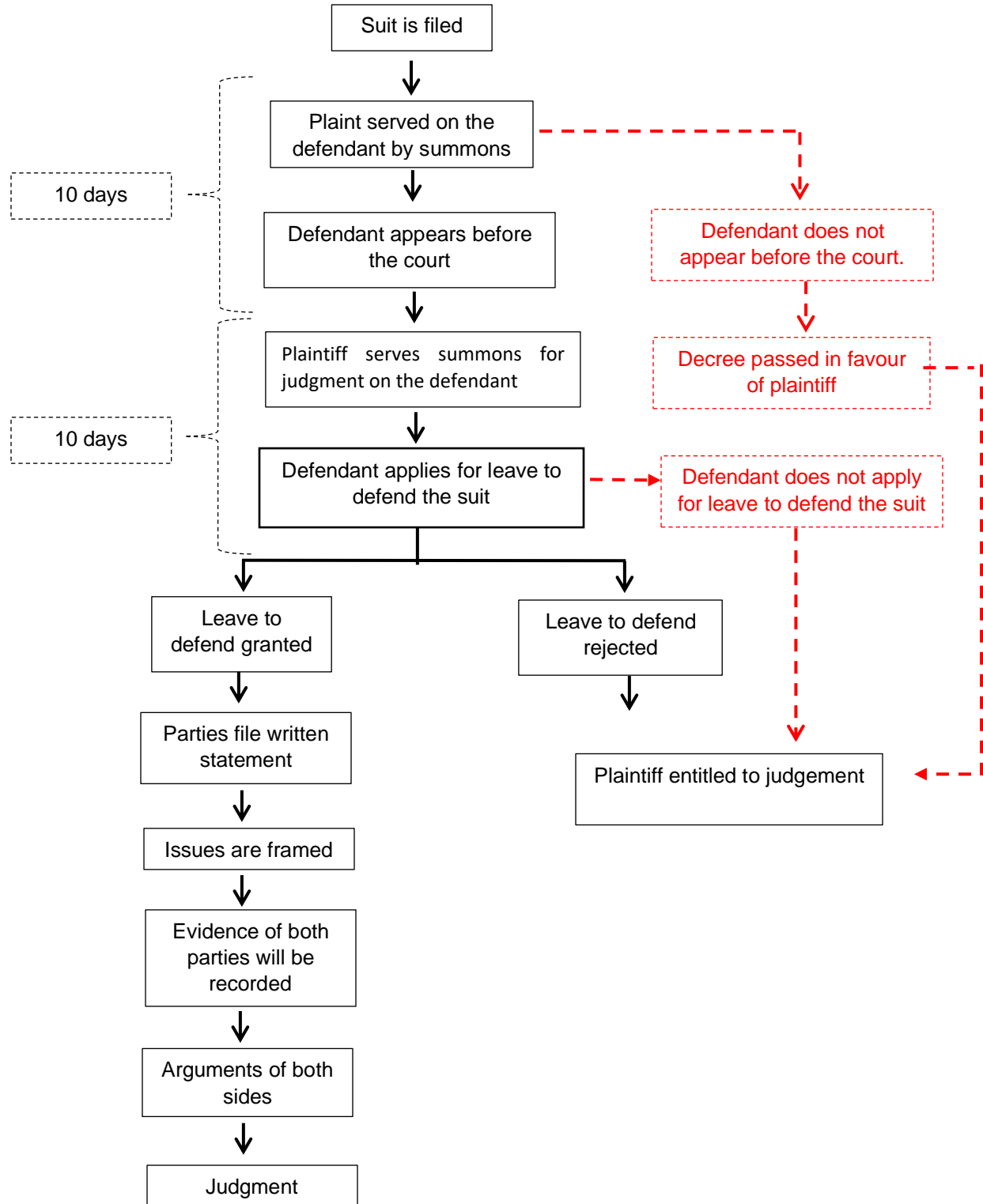
In an ordinary suit, a defendant is entitled to defend himself without the permission of the court. However, in case of summary suits, the general principle is that the defendant does not get an opportunity to defend her case **unless** she is permitted to do so by the court. Accordingly, 'leave to defend' is the permission taken by the defendant from the court to defend her case.

**11. What is the limitation period to file an application for leave to defend?**

The defendant is required to apply for leave to defend within 10 (ten) days from the date of service of summons upon her. As a general rule, the court will not excuse delay.

**12. What is the procedure in summary suits?**

The procedure in summary suits is as follows:



**13. Whether any principles are to be followed by the court while deciding whether to grant “leave to defend”?**

Indian courts have laid down the following parameters to be considered while granting “leave to defend”:

Parameters		Whether “leave to defend” to be granted
(i)	Defendant has shown that it has a substantial defense	Unconditional “leave to defend” will be granted
(ii)	Defendant has raised an issue which is to be determined by trial	
(iii)	Defendant has disclosed facts which infer that she may be able to establish a defence at trial	“leave to defend” will be granted. The court may impose conditions as to the time or mode of trial but not as to payment or furnishing security.
(iv)	Defendant has no defence, or the defence set up is illusory or sham	No “leave to defend” will be granted
		“leave to defend” may be granted subject to the amount claimed being paid in court or otherwise secured

**14. Whether an appeal lies against the order of the court allowing or refusing leave to defend?**

Indian courts have held that no appeal lies against an order of the court allowing or refusing leave to defend. The aggrieved party can challenge the order allowing or refusing leave to defend in an appeal against the final judgment of the court.

**15. What is the limitation period for institution of summary suit?**

A summary suit is required to be instituted within 3 (three) years from the date on which the cause of action arises.

***Disclaimer: The information contained in this document is not legal advice or legal opinion. The contents recorded in the said document are for informational purposes only and should not be used for commercial purposes. Acuity Law LLP disclaims all liability to any person for any loss or damages caused by errors or omissions, whether arising from negligence, accident, or any other cause.***