

Supreme Court RULES FOR INTERIM PAYMENTS

A. APPLICATIONS FOR INTERIM PAYMENT

- 1) The plaintiff may, at any time after the Statement of Claim has been served on a defendant and the time limited for him to file Defence has expired, apply to the Court for an order requiring that defendant to make an interim payment and it shall not be necessary to wait until all defendants have been served. The rules in this Title shall apply, with the necessary modifications, to any party prosecuting a claim to any counterclaim or proceeding commenced otherwise than by writ, where one party seeks an order for an interim payment to be made by another
- (2) An application under this rule shall be made by summons but may be included in a summons for summary judgment. No Special preliminary orders are required to be obtained if the application for interim payment of damages is based on an admission of liability, or on the likelihood of recovery of substantial damages or of some substantial sum of money other than damages.
- (3) Where it is desired to apply on the ground that the plaintiff has obtained judgment for damages debt or other sum to be assessed or has obtained an order for an account to be taken and payment of the amount certified due on the taking of the account the judgment or order must be perfected before the hearing of the application.
- (4) All applications under this rule shall be supported by an affidavit sworn by the plaintiff (or a person having personal knowledge of the facts) which shall:-
  - (a) verify the amount of the damages, debt or other sum to which the application relates, deal with the steps already taken in the action and explain, briefly, the cause of action and the grounds of the application;

- (b) exhibit any documentary evidence relied on by the plaintiff in support of the application;
  - (c) exhibit all documentary material affecting the application;
  - (d) verify the material facts on which the application is based
  - (e) state the amount, expressed as a sum of money or as a periodic payment which, if a final judgment or order were made or given in favour of the plaintiff, the defendant would in the belief of the deponent, be held liable to pay in respect of his use and occupation of any property during the pendency of the action and also state whether the liability arises by virtue of a lease or tenancy agreement or otherwise;
  - (f) state that, in the belief of the deponent, even if a final judgment or order were given or made in favour of the defendant, he would still be under an obligation to pay the plaintiff for use and occupation of the property during the pendency of the action;
  - (g) state the amount claimed and how it is calculated.
- (5) Affidavits in support of an application in a personal injury action should in addition;
- (i) Exhibit the medical reports
  - (ii) Set out in detail the special damages and past and future loss of earnings claimed and the basis thereof
  - (iii) Explained why the plaintiff needs an interim payment and details be given of any special needs and hardship.
- (6) Copies of the summons and any affidavit in support and any documents exhibited thereto shall be served on the defendant against whom the order is sought not less than 14 days before the return day. The Judge may direct that the Summons be served on an interested party.
- (7) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown.

B. ORDERS FOR INTERIM PAYMENT GENERALLY

(1) On the hearing of an application under rule A in an action for damages, if the Court is satisfied-

- (a) that the defendant against whom the order is sought (in this paragraph referred to as "the respondent") has admitted liability for the plaintiff's claim, or
- (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or
- (c) that, if the action proceeded to trial, the plaintiff will succeed on the face of the pleadings to obtain judgment for a substantial sum against the respondent or, where there are two or more defendants, against any or all of them,

the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just not exceeding a reasonable proportion of the sum which in the opinion of the Court is likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely.

(d) In an Order made against two or more defendants the Court must be satisfied that the aggregate of the sums awarded against the individual defendants does not exceed the total amount the plaintiff is likely to recover against the defendants

It must be made clear in the order;

- (i) The Defendants against whom the order is made
- (ii) The proportion of the interim payment award which each defendant must pay.

(2) No order shall be made under paragraph (1) if it appears to the Court that the defendant is not a person falling within one of the following categories, namely:-

- (a) a person who is insured in respect of the plaintiff's claim;
- (b) a public authority; or
- (c) a person (including a public or private corporation) whose means and resources are such as to enable him to make the interim payment; provided, in this instance, that the plaintiff is not impecunious and there is no likelihood that a final adjustment order may be made in favour of the defendant.



C ORDER FOR INTERIM PAYMENT IN SPECIAL CASES

- (1) If on the hearing of an application under rule A, the Court is satisfied:
  - (a) that the plaintiff has obtained an order for an account to be taken as between himself and the defendant and for an amount certified due on taking the account to be paid; or
  - (b) that the plaintiff's action includes a claim for possession of land and, if the action proceeded to trial, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the action, even if a final judgment or order were given or made in favour of the defendant;

the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim or counterclaim on which the defendant may be entitled to rely.

D MANNER OF PAYMENT

- (1) The amount of any interim payment ordered to be made shall be paid to the plaintiff or his Attorney-at-Law unless the order provides for it to be paid into Court, and where the amount is paid into Court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out at such time or times as the Court thinks fit.
- (2) An application under D(1) above for money in Court to be paid out may be made ex-parte. The Court hearing the application may direct an inter-partes summons to be issued.
- (3) An interim payment may be ordered to be made in one amount or by such installments as the Court thinks fit.
- (4) Where an interim payment is ordered in respect of a claim for the use and occupation of land the order may provide for periodical payments to be made during the pendency of the action.
- (5) The Court may in its discretion Order that the contingency of repayment of the award with or without interest be secured in such manner or on such terms as the Court deems fit.

**E DIRECTIONS ON APPLICATION UNDER RULE A**

Where an application is made under rule A whether or not an award is made the Court may give directions as to the further conduct of the action, and, so far as may be applicable, the procedural rules of the Supreme Court applicable to Summons for Directions and Discovery and Inspection, shall, with the omission of so much of as requires the parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application were a summons for directions, and, in particular, the Court may order an early trial of the action.

**F NON -DISCLOSURE OF INTERIM PAYMENT AWARD**

The fact that an order has been made under rule B or C shall not be pleaded and, unless the defendant consents or the court so directs, no communication of that fact or of the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the Court at the trial, or hearing, of any question or issue as to liability or damages until all questions of liability and amount have been determined.

**G TIME FOR DISCLOSURE OF INTERIM PAYMENT AWARD**

So soon as the Court has decided all questions of liability, and the amount of the damages,

- (i) the fact that an order for interim payment has been made,
- (ii) what was its amount,
- (iii) the date it was paid
- (iv) by which of two or more defendants,

and all other relevant facts, shall be communicated to the Court immediately, and before the judgment is perfected by entry, so as to enable the Court to make the necessary adjustments under Rule I, and also with respect to the question of interest of the damages and on the question of costs.

**H PAYMENT INTO COURT IN SATISFACTION**

Where, after making an interim payment, whether voluntarily or pursuant to an order, a defendant voluntarily pays a sum of money into Court, the notice of payment must state that the defendant has taken into account the interim payment.

I ADJUSTMENT ON FINAL JUDGMENT OR ORDER OR ON DISCONTINUANCE

Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue his action or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceedings on the application of any party, make such order with respect to the interim payment as may be just, and in particular-

- (a) an order for the repayment by the plaintiff of all or part of the interim payment with interest, or
- (b) an order for the payment to be varied or discharged, or
- (c) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

I EFFECT OF GRANT OF LEAVE TO DEFEND

Where the Judge finds that the Defendant to the claim should be granted unconditional leave to defend no order for interim payment shall be made in the suit and any such order previously made shall be suspended forthwith upon the grant of unconditional leave to defend. The grant of conditional leave to defend against a claim shall not act as a bar to the grant of an order for interim payment in the suit if in all the circumstances such an order for interim payment is warranted.