
**Code Of Civil Procedure (Maharashtra Amendment) Act,
1977**

64 of 1977

[09 December 1977]

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An Act further to amend the Code of Civil Procedure, 1908, in its application to the State of Maharashtra WHEREAS extensive amendments have been made in the Code of Civil Procedure, 1908, by the Code of Civil Procedure (Amendment) Act, 1976, enacted by Parliament; AND WHEREAS section 97 of this Amendment Act of 1976 provides inter alia that any amendments made in the said Code by a State Legislature before the commencement of that Act shall, except in so far as they are consistent with the said Code as amended by that Act, stand repealed; AND WHEREAS certain amendments have been made in the said Code in its application to the State of Maharashtra, or a part thereof, by the State Legislature; AND WHEREAS it is expedient to delete from the said Code in its application to this State the amendments made by the State Legislature which have become inoperative or redundant and to leave no room for any doubt, to re-enact such of them which may be inconsistent with the said Code as amended by the Amendment Act of 1976 but which are considered necessary in this State; AND WHEREAS it is therefore expedient further to amend

the said Code in its application to this State for the purposes hereinafter appearing; It is hereby enacted in the Twenty-eighth Year of the Republic of India as follows :- 1. For Statement of Objects and Reasons, see Maharashtra Government Gazette, 1977, Part V, Extraordinary, pp. 350-51.

1. Short Title :-

This Act may be called the Code of Civil Procedure (Maharashtra Amendment) Act, 1977.

2. Repeal Of Mah. Xxv Of 1970 :-

The Code of Civil Procedure (Maharashtra Amendment) Act. 1970 is hereby repealed; and section 9A inserted by that Act in the Code of Civil Procedure, 1908, in its application to the State of Maharashtra (here in after referred to as the principal) Act shall also stand repealed, without prejudice to the validity anything previously done or omitted to be done under that section.

3. Insertion Of Section 9A In Act V Of 1908 :-

After section 9 of the principal Act, the following section shall be inserted, namely :

"9A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.-

(1) Notwith standing anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of suit.

(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction".

NOTES

Section 9 refers to suits in general, in section 9 of the Civil Procedure Code, jurisdiction of the Civil Courts is elaborated.

Categories of Jurisdiction.-Jurisdiction are of various nature and they are as follows : Subject matter, Consensual, Local, Personal, pecuniary. Appellate, etc.

Meaning of Jurisdiction.-Jurisdiction consists of taking of a case involving the determination of some jural relation in ascertaining the essential points of it and in pronouncing upon them.

It means the legal authority to administer justice according to the means which the law has provided and subject to the limitations imposed by that law upon the Judicial authority.

Inherent powers of the Court.-A Court is always clothed with jurisdiction to see whether it has jurisdiction to try the cause submitted to it. The power and Jurisdiction of a Civil Court to decide a particular matter rests on the general law. Jurisdiction is the power to hear and determine, it does not depend upon regularly of the exercise of that power or upon correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly. AIR 1962 SC 1621.

Preliminary Issues.-Whether Court has Jurisdiction or not has to be decided with reference to the initial assumption of jurisdiction by the Court. AIR 1062 SC 1621.

An inquiry, however whether Court has jurisdiction or not, in any particular case, is not as exercise of Jurisdiction, over the case itself. It is really an investigation as to whether the conditions of cognizance are satisfied. AIR 1953 SC 16(19).

In which case provisions of section 9A are attracted.-Where the Court is of the opinion that the case or any part of it can be disposed of only on an issue of law, it may try that issue first if it relates to the jurisdiction of the Court or a bar created to the suit by any law for the time being in force. Section 9A is a departure from the procedure for deciding a preliminary issue under order 14, rule 2 because it is prefaced by a non obstante clause which gives it effect notwithstanding anything contained to the contrary in the Code or in any law for the time being in force. Fedroline Antoney Joseph v. Vinod Vishaji Dharod and Hazol Rodriques and Ors.. 2002 (9) L. J. Soft 86. If the cause of action having arisen on or about 4.10.1976 and as per the statutory provision, on that date, if there was no bar to the filing of the suit, the amendment being not retrospective, certainly the suit would lie. The order passed by the

Trial Court under order VII. rule 11 of rejecting the plaint, therefore, cannot be sustained. *Anant Mahadeo Godbole v. Achut Ganesh Godbole & Ors.*, 2000(1) Bom. C. R.121 : 2000 (8) L.J. Soft 53.

Objections to the jurisdiction of the Civil Court.-Where the jurisdiction of the Court is challenged, it cannot refuse to enquire into question on which its jurisdiction depends.- AIR 1962 SC 1621. In fact, a judicial investigation of all allegations and facts, sufficient to guide the Court, should precede the admission or negation of jurisdiction and on question of hardship or no consideration of technicality can be permitted to affect the judgment.

The presumption is in favour of giving jurisdiction to the highest Court, and it is the duty of party alleging want of jurisdiction to prove his allegation.

Scope of the Jurisdiction.-As explained in C.P.C. section 15, the jurisdiction of a Court to try a suit is of three kinds viz. (a) with reference to the nature of the suit, (b) pecuniary jurisdiction, (c) territorial jurisdiction.

Where the Court has jurisdiction to try a suit. It has jurisdiction to decide every question arising out of it and its decree, thoughtly may be wrong, is binding on the parties until It is reversed in some manner provided by Law.- (1901) 25 Bom. 337.

But where a suit is instituted In a Court having no jurisdiction to try to it, the defect is a fatal one and cannot be curred by its subsequent transfer to a Court, having jurisdiction.

- See section 21 of C.P.C. for qualification to this rule.

Once Jurisdiction is acquired by a Court over a suit, it continues in all matters in the suit that are brought within its cognizance by the Civil Procedure Code.

The Civil Court takes cognizance of the matter because it possesses jurisdiction to do so under section 9 of Civil Procedure Code.

If there is no jurisdiction of the Court.-Generally, in such cases, the judgment and order of the Court, even though they are precise, certain and technically correct are merely nullities and not only voidable but are void. This general rule is subject to two exceptions i.e. section 12 of the Civil Procedure Code and section 11 of the Suits Valuation Act.

There is a difference between exercise of jurisdiction and the existence of the jurisdiction.

When condition, pecuniary, territorial and subject matter with reference to jurisdiction are fulfilled, the Court can be said to have jurisdiction.

Under section 9A, it is the duty of the Court to hear the application forthwith, for granting or setting aside the order granting an interim relief and determine the question of the jurisdiction of the Court wherever it is taken.- AIR 1974 Bom. 288 (290).

The section is mandatory. The issue as to jurisdiction of the Court must be decided expeditiously as a preliminary issue.- 1980 Mah. L. J. 203.

However, clause (2) of section 9A. refers to the situation under which even during this interim period till the adjudication of the preliminary issue, the Court is empowered to grant interim relief on interim basis.- AIR 1982 Bom. 263.

See for the situation arises at the time of Notice of Motion when the question of jurisdiction is raised.- AIR 1977 Bom. 35.

Section 9-A. Confers jurisdiction upon the Courts to pass interim orders and to grant interim reliefs even though Courts has no jurisdiction to entertain and try the suit as such.- Kapli P. Mohmed v. Anthony, (1984) 2 Bom. C. R. 199.

While deciding the scope and the applicability of section 9A, it was held that the scheme of the said provision unmistakably indicates that the Court is expected to determine the objection to jurisdiction as an issue in the suit which should be treated as a preliminary issue and having regard to the concept of pleading, the issues arising therefrom and the determination of such issues on evidence and on the anvil of procedure as prescribed under the Code, it would be clear that the determination of such issue even at that stage would be on the consideration of all aspects in which the said issue was framed at the trial, and lastly, the determination of such issue even at that stage would get a label of finality in so far as that proceeding and the suit is concerned.

Therefore, the permissibility and desirability of such feature of composite hearing are two separable features and the course to be adopted can well be left to the Presiding Judge in context of the fact and circumstances of each case. IF it is decided to consider only the said preliminary issue and to keep back for the time being the interim application, then the possibility of any irreparable harm being caused, to either side can well be avoided as clause (2) takes care of such a situation under which even during this interim period till the adjudication of the preliminary issue, the Court is empowered to grant the interim relief purely on interim basis.- Kranti Mohan Mehra v. Fatehchand Vasuram Behl. 1983 Hah. L.J. 141.

Issue of Jurisdiction.-The question whether the suit is barred by

limitation, is a question which would expressly touch upon the issue of jurisdiction of the Court, for, if the suit is barred by limitation, the Court trying such a suit is precluded to pronounce upon the merits of the contentions. With a view to avoid multiplicity of proceedings, as observed by the Division Bench of this Court, it would be, therefore, essential that issue of jurisdiction in the context of suit being barred by limitation, is framed and decided in the first instance before proceeding to decide the suit on any other issue. If the said issue is answered against the plaintiff, then it would be wholly unnecessary for the Trial Court to undertake the extensive exercise of recording of evidence with regard to the rival stand on the merits of the case. This would enable the Court to decide the proceedings with utmost dispatch and would subserve the purpose with which section 9-A has been introduced by the Maharashtra Amendment Act, 1977. *Sudesh w/o Sushilkumar Handa v. Abdul Ajiz s/o Umarbhai & Anr.*, 2001 (1) Mah. L.J. 324 : 2001 (1) All M. R. 670. See also *Meher Singh v. Deepak Sawhny*. 1999 (1) Bom. C. R. 107.

4. Repeal Of Bom. Lx Of 1948 :-

The Code of Civil Procedure (Bombay Amendment) Act, 1948, is hereby repealed; and the amendments made by the said Act in the principal Act shall also stand repealed, without prejudice to the validity of anything previously done or omitted to be done under the said amendments.

5. Repeal Of Hyd. Xi Of 1953 And Mah. Vi Of 1965 And Hyd. Xviii Of 1953 :-

The Code of Civil Procedure (Hyderabad Amendment) Act, 1953 and the Code of Civil Procedure (Extension of Hyderabad Amendment) Act, 1964, and the Code of Civil Procedure (Hyderabad Second Amendment) Act, 1953 are hereby repealed; and the amendments made by the two Hyderabad Acts in the principal Act shall also stand repealed without prejudice to the validity of anything previously done or omitted to be done under the said amendments.

6. Amendment Of Section 60 Of Act V Of 1908 :-

In section 60 of the principal Act, in sub-section (1), in the proviso- (a) after clause (g), the following clause shall be inserted, namely

:-

"(gg) in the Hyderabad area of the State of Maharashtra, any pension granted or continued by the Central Government of the Government or the former State of Hyderabad or any other State Government, on account of past services or present infirmities or as a compassionate allowance, which is not covered by clause (g)".

(b) after clause (kb), the following clause shall be inserted namely

:-

"(kbb) the amounts payable under the policies issued in pursuance of the rules for the Hyderabad State Life Insurance and Provident Fund, which are not covered under clause (ka) or (kb)".

Explanation.-Where any sum payable to a Government servant is exempt from attachment under this clause or clause (gg). such sum shall remain exempt from attachment, notwithstanding the fact that owing to the death of the Government servant the sum is payable to some other person.