

**Civil : Jurisdiction and Exclusion of jurisdiction.**

Jurisdiction means and includes any authority conferred by the law upon the court, tribunal or judge to decide or adjudicate any dispute between the parties or pass judgment or order. Exclusion of jurisdiction means prevention or prohibition to the court not to entertain or try any matter though the dispute is civil in nature. [Smt Ujjambai -vs State of UP AIR 1962S 1621]

Jurisdiction is key question for the court which goes to the root of the case and decide the fate of matter either at preliminary stage or on merit. If any order passed without jurisdiction, it becomes nullity and not enforceable by law. [Chandrabai Bhoir -vs Krisnna Bhoir AIR 2009 SC 1645 Bom]

The jurisdiction of the court is decided on the basis of revenue limit, valuation, territorial limit, surrounding circumstances.

1] Jurisdiction S.9 of General Law

Section 9 of CPC provides that the Court shall have jurisdiction to try all suits of civil nature except suits of which their cognizance is either **expressly or impliedly barred**. Even the matter of civil nature in different statute. The question of jurisdiction is question of law which goes to the root of the case and is to be decided first.

A plea of bar to jurisdiction of a civil court must be considered having regard to the contentions raised in the plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety. The Court may not be justified in determining the question, one way or the other, only having regard to the reliefs claimed de'hors the factual averments made in the plaint. The rules of pleadings postulate that a plaint must contain material facts (Church of North India Vs.Lavajibhai AIR 2005 SC 2544 ). For the purpose of determination of question as to whether the suit is barred, the averments made in the plaint are germane. [See Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors. AIR 2004 SC 1801]

Hon'ble Supreme Court in the case of **Dhulabhai, etc. v. State of Madhya Pradesh and others A.I.R. 1969 S.C. 78 (Constitutional Bench)** while discussing the provision of section 9 of CPC laid down the law as under :

(1) Where the statute gives a finality to the orders of the special tribunals

the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

(3) Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(4) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(5) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(6) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(7) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an

express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(8) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

The Hon'ble Supreme Court, in the matter of (Abdul Gafur/ State of Utterakhand 2008 (10) SCC 97, taking recourse to the jurisdiction of Civil Court, have observed that as per section 9 CPC, in all types of, civil disputes, the Civil Courts have inherent jurisdiction unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication by any statutory provision and conferred on other Tribunal or Authority. Thus, the law confers on every person an inherent right to bring a suit of civil nature of one's choice, at one's peril, howsoever frivolous the claim may be, unless it is barred by a statute.

**Section 9-A and Order 14 Rule 2 of C.P.C.**

After amendment of the Code of Civil Procedure in 1973, section 9-A in the present form is substituted in the year 1977.

Section 9A of CPC provides that if, at the hearing of any application for granting or setting aside an order granting any interim relief , an objection to the jurisdiction of the Court to entertain such a 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. It provides that 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 the suit. The provisions of law contained in Sub-section (2) of Section 9A empowers the Court to grant any such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction.

In Tayabbhai M. Bagasarwalla v. Hind Rubber Industries Private Limited (1997) 3 SCC 443, the Hon'ble Supreme Court held that when an objection to jurisdiction of the Court is raised at the hearing of an application for the grant of or vacating interim relief "the Court should determine that issue in the first instance as a preliminary issue before granting or setting aside the relief already granted". However, sub

section (2) of Section does not preclude the Court from granting such interim relief as it may consider necessary pending the decision on the question of jurisdiction.

Opportunity to lead evidence:

In Meher Singh v. Deepak Sawhny 1999(1) BomCR 107 while deciding the question, Whether while deciding the preliminary issue of jurisdiction as contemplated under section 9-A the parties are required to be given opportunity to lead evidence?

Hon'ble Bombay High Court observed that if section 9-A is not added, then at interim stage, the Court is not required to decide the issue of jurisdiction finally and the Court by referring to the averments made in the plaint, would ordinarily determine whether or not the Court has jurisdiction to try the suit. However, it is apparent that section 9-A is added with a specific object to see that objection with regard to jurisdiction of the Court is decided as a preliminary issue. According to the Legislature, the practice of granting injunctions without going into the question of jurisdiction even though raised, has led to grave abuse. Hence the said section is added to see that issue of jurisdiction is decided as a preliminary issue notwithstanding anything contained in the Civil Procedure Code, including Order XIV, Rule 2. Once the issue is to be decided by raising it as a preliminary issue, it is required to be determined after proper adjudication. Adjudication would require giving of opportunity to the parties to lead evidence, if required.

**Issue of limitation as a Preliminary Issue :**

Whether a plea of limitation as a bar to the Court entertaining the entire suit can be raised as an issue of jurisdiction under Section 9A of CPC is concluded by the following judgments of Hon'ble Bombay High Court:

- (a) Smith Kline Beecham Cons v. Hindustan Lever  
(2003)105BOMLR547
- (b) Foreshore Co-operative Housing Society Limited v. Praveen Desai 2006(6) Bom CR 230 (Single Judge) and 2009 (1) Bom CR 757 (DB);
- (c) Royal Palms (India) Pvt. Ltd. v. Bharat Shantilal Shah (DB);Appeal No.113 of 2008 in Notice of Motion No.1538 of 2007
- (d ) Mukund Ltd. v. Mumbai International Airport ;

(e) Jagshi Shah v. Shaan Builders (2012) 3 Bom CR 770 (DB)

(f) Ferani Hotels Private Ltd. Vs. Nusali Neville Wadai reported in 2013(3)BomCR 669.

In the case of Smith Kline Beecham Cons v. Hindustan Lever (2003)105BOMLR547 Hon'ble Bombay High Court (DB) has categorically held, that it is not sufficient that the Court has territorial or pecuniary jurisdiction or jurisdiction in relation to the subject matter of the suit but if the suit is barred by any statute, the Court will have no authority to hear and decide the same. The said judgment clearly holds that the use of the word "jurisdiction" is used in a wider sense under Section 9A, which would include the bar to maintainability of the suit, i.e. to say any statutory bar to the maintainability of the suit. Section 3 of Limitation Act clearly mandates the Court to dismiss the suit if the same is barred by Limitation.

Furthermore, in the case of Foreshore Co-operative Housing Society Ltd. Vs. Praveen D Desai, 2008(6) ALLMR 600 while deciding the question, Whether plea of limitation can be decided as a preliminary issue of jurisdiction under Section 9A of the Code of Civil Procedure ? Hon'ble Bombay High Court (DB) observed that a plea of limitation is a plea which goes to the jurisdiction of the Court and it is a plea on law, and it is a settled position in law that when a suit is barred by limitation, the Court is precluded from proceeding on the merits of the contentions and in fact obliged to dismiss the suit.

The provisions of Section 9A cannot be utilized as a matter of litigational strategy by the Defendant or, for that matter, by the Plaintiff depending upon whether an ad interim order has or has not been passed by the Court under Sub-section (2) of Section 9A<sup>1</sup>.

The application of interim relief is said to be heard and disposed of expeditiously and a further qualification is cast that in view of the objection to the jurisdiction, the matter need not be adjourned to the hearing of the suit . This and the other aspect indicated earlier manifestly suggest the legislative intent that in the first instant the objection to jurisdiction itself be dealt with expeditiously and obviously before granting the interim relief; secondly that it should not be responsible for the lingering of the suit , and that is why it should be treated as a preliminary issue and

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<sup>1</sup> Mukund Limited v. Mumbai International Airport : 2011 (2) Mh.L.J. 936;

thirdly the decision of such a preliminary issue need not be postponed to the full dressed trial on merits on other issues , and thus its hearing and adjudication is brought in advance and lastly the application for interim relief also need not be postponed to the final hearing of the suit<sup>2</sup>.

Section 9A of CPC is not inconsistent with the provisions of Order 14 Rule 2 and will therefore not stand repealed by Section 16 of the Code of Civil Procedure Amendment Act 2002 is concluded by the following decisions of Hon'ble Bombay High Court :

(a) Satpuda Tapi Parisar Sahakari Sakhar Karkhana Ltd. v. Jagruti Industries 2008 (5) Bom CR 284 (Aurangabad Bench);

(b) Foreshore Co-operative Housing Society Limited v. Praveen Desai 2009 (1) Bom CR 757 (DB)

Conclusion: The principles which emerge from these decisions formulated by Hon'ble Bombay High Court in the case of Ferani Hotels Private Ltd. Vs. Nusali Neville Wadai reported in 2013(3)BomCR 669 is as under :

(i) The provisions of Section 9A of CPC are mandatory. Where at the hearing of an application for granting or setting aside an order granting interim relief in a suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties, the Court shall proceed to determine at the hearing of the application the issue as to jurisdiction as a preliminary issue before granting or setting aside the order granting interim relief. Such an application cannot be adjourned to the hearing of the suit and must be disposed of expeditiously;

(ii) Though the application for the grant of interim relief or, as the case may be, for setting aside an order granting interim relief cannot be disposed of before a decision on the preliminary issue as to jurisdiction, the Court may nonetheless grant such interim reliefs as it may consider necessary pending the determination by it of the preliminary issue as to jurisdiction;

(iii) Once the issue of jurisdiction is required to be decided as a preliminary issue, notwithstanding anything contained in the Code, including Order 14 Rule 2, it has to be determined after adjudication which would require parties being given an opportunity to lead evidence. The decision by the Court of the preliminary issue is not

merely a prima facie determination for the purposes of the application for interim relief, but is a final determination of the issue of jurisdiction which the provision mandates must be heard and disposed of first as a preliminary issue. It is only upon the disposal of the preliminary issue of jurisdiction, that the Court can then take up the final disposal of the application for interim relief;

(iv) The first part of Section refers to the stage at which the objection is taken, the stage being at the hearing of an application for granting or setting aside an order granting interim relief. The second part of the provision elucidates the nature of the objection, the objection being to the jurisdiction of the Court to entertain such a suit;

(v) Following the judgment of the Constitution Bench of the Supreme Court in Pandurang D. Chougule v. Maruti H. Jadhav AIR 1966 SC 153, which held that it is well settled that a plea of limitation is a plea which concerns the jurisdiction of the Court which tries the proceedings and that a finding on the plea in favour of a party raising it would oust the jurisdiction of the Court, the Division Bench in Foreshore Co-operative Housing Society **Limited** (supra) held that the question of limitation would constitute a question of jurisdiction within the meaning of Section . The decision in Foreshore Co-operative Housing Society has been followed by a Division Bench in Royal Palms, Mukund and Associated Bombay Cinemas (supra).

Thus, section 9A mandates that when an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties, the Court will have to decide the issue expeditiously and in no case to be adjourned to the hearing of the suit. The moment, the issue of jurisdiction is raised under Section 9A of the Code of Civil Procedure, the said issue should be decided at first, and not to be adjourned to a later date. The main reason is that if the Court comes to finding that it does not have jurisdiction vested in it in law, then no further enquiry is needed and saves a lot of valuable judicial time.

**Order 14 Rule 2(2)** of CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of **on an issue of law only**, it may try that issue first if that issue relates to (a) the jurisdiction of the

court, or (b) a bar to the suit created by any law for the time being in force. Thus, Rule 2 of Order XIV empowers the Court to frame preliminary issues regarding jurisdiction of the Court and the bar to a suit created by any law for the time being in force when such issues can be disposed of as issues of law only. The provisions of this Rule before the amendment of the Code of Civil Procedure in 1976 came up for consideration before Hon'ble Apex Court in Major S.S. Khanna v. Brig. F.J. Dillon AIR 1964 SC 497 and it was held as under:

Under Order 14 Rule 2, Code of Civil Procedure where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.

Though there has been a slight amendment in the language of Order 14 Rule 2 Code of Civil Procedure by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue<sup>1</sup>.

In Ramesh D. Desai and Ors. v. Bipin Vadilal Mehta and Ors. (2006) 5 SCC 638, while dealing with the issue of limitation, Hon'ble Apex Court opined that a plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. The Court further proceeded to state that a plea of limitation is a mixed question of fact and law. On a plain consideration of the language

employed in Sub-rule (2) of Order 14 it can be stated with certitude that when an issue requires an inquiry into facts it cannot be tried as a preliminary issue.

2] Exclusion : a) Territorial Jurisdiction ,

Sections 16 to 20 of the CPC deal with territorial jurisdiction of a Court (place of suing). Whereas Sections 16 to 18 relate to immovable property, suits for compensation for wrongs to persons or movables have been dealt with under Section 19. Section 20 of the Code is a residuary provision and covers all cases not falling under Sections 16 to 19.

In the case of Harshad Chiman Lal Modi Vs. DLF Universal, AIR 2005 SC 4446 Hon'ble Apex Court observed that, section 16 thus recognizes a well established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. Proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant.

In Hakam Singh v. Gammon (India) Ltd. [1971]3 SCR 314 , it was held by Hon'ble Apex Court that it is not open to the parties to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two Courts or more have under the Code of Civil Procedure jurisdiction to try a suit or a proceeding, an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. It was also held that such an agreement does not contravene Section 28 of the Contract Act.

In A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies [1989]2SCR1 Hon'ble Apex Court observed that, "When the Court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the ousting expression or clause properly. Often the stipulation is that the contract shall be deemed to have been made at a particular place. This would provide the connecting factor for jurisdiction to the Courts of that place in the matter of any dispute on or arising out of that contract. It would not, however, ipso facto take away jurisdiction of other Courts. Where

an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other Courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other Courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like 'alone', 'only', 'exclusive' and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim 'expressio unius est exclusio alterius' - expression of one is the exclusion of another - may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all other from its operation may in such cases be inferred. It has therefore to be properly construed."

This view has been reiterated in *Angile Insulations v. Davy Ashmore India Ltd.* [1995]3SCR443 .

In *National Thermal Power Corporation v. Singer Company and Ors.* [1992]3 SCR 106 the parties in that case by an agreement had chosen the jurisdiction of one Court to the exclusion of the other. Likewise, they also agreed as to the applicability of law. In the light of the fact situation, the Hon'ble Apex Court held that the parties are bound by such Agreement and it has to approach a Court in consonance with the agreement.

b) Monetary Jurisdiction:

Section 15 of the CPC provides that every suit shall be instituted in the Court of the lowest grade competent to try it. The jurisdiction of a Civil Judge, Junior Division extends to all original suits and proceedings of a civil nature wherein the subject matter does not exceed its amount or value Five lakh rupees(S.24 of Bombay Civil Court Act 1869).

A Civil Judge (Senior Division) having unlimited pecuniary jurisdiction.

3] Subject-wise Jurisdiction. Challenge at what stage.

A Civil Judge (Senior Division) in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature as may arise within the local jurisdiction of the Courts.

Section 32(1) of Bombay Civil Court Act 1869 empower Civil Judge (Senior Division) to receive or register any suit in which Government

or any officer of the Government in his official capacity is a party. Sub-section 3 is exception of sub-section 1.

**Challenge at what stage :**

Section 21 of the CPC deals with the stage challenging the jurisdiction. The stage of challenging the jurisdiction came up before Hon'ble Apex Court in Harshad Chiman Lal Modi v. DLF Universal Ltd. and Anr. reported in AIR 2005 SC 4446 observed that the jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdiction are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.

In Bahrein Petroleum Co. Ltd. v. P.J. Pappu AIR 1966 SC 634 Hon'ble Apex Court observed in para 32 that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. In Kiran Singh v. Chaman Pawan [1955] 1SCR117 Hon'ble Apex goes to say that it is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction...strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.

In Chief Engineer Hydrel Project Vs. Ravinder Nath AIR 2008 SC 1315 Hon'ble Apex Court observed that once the original decree itself has been held to be without jurisdiction and hit by the doctrine of *coram non iudice*, there would be no question of upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, First Appellate or the Second Appellate stage.

4. **Exclusion by Rent Act, Co-operative Act and Slum Act.**

**A] Maharashtra Rent Control Act, 1999.**

Chapter VIII would indicate that in relation to the applications and which are referred to in Section 42 the Act enacts a complete scheme from Sections 39 to 46 and from 48 to 52. That Chapter being a complete Code to deal with certain applications and provides for their summary disposal, thus ousts the jurisdiction of the civil court.

*Anil -Vs- Govind, reported in 2015 (1) Mh.L.J. 370.*

Section 33 deals with any dispute regarding relationship of the landlord and tenant for in respect of recovery of rent and possession of any premises. Section 33 in contrast confers jurisdiction in Brihan Mumbai in the Court of Small Causes, in other areas for which the Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887 in such courts and elsewhere in the Court of Civil Judge Junior Division or Senior Division having ordinary jurisdiction, for entertaining and trying any suit or proceeding. ( Mina Srinivasan Krishnan vs. Arun Bhaskar Adarkar 2014(5)Bom C R 53 ).

The right of tenancy is heritable and the provisions of Maharashtra Rent Control Act could not supersede the right of inheritance over the **Personal Laws** after the death of tenant who resides with the tenant. [*Firdose Mohammad Khan -vs- Siddique Begum Abdullah Khan Khilji and others, 1982 (1) Bom.C.R. page 212. (para-52).*]

In order to attract the provisions of Maharashtra Rent Control Act though relationship may be between the parties but the premises must be a part of the tenancy i.e. open space.(*Pradip Advertising Agency, Nagpur -Vs- Shri Aurbindo Circle Registered Society, 2015(2) Mh.L.J., page 167*).

Similarly, Small Causes Court is excluded to try the suit which decide the tenancy right pertaining to heir who is not residing at the time of death of the tenant and residing **elsewhere**. (*Kasmira Robert Lobo and others -Vs- Soli Bahadurji Batiwala and another, 2002(2) ALL MR page 855 (Bom.) {City Civil Court has jurisdiction}*).

Though Presidency Small Cause Court deals with the cases of landlord and tenant, licensor and licensee under section 33 of Maharashtra Rent Control Act but while exercising the jurisdiction under section 41 of the Presidency Small Cause Court Act, the jurisdiction of Small Cause Court excluded.

While dealing the objection to the jurisdiction and nullity of

decree (sections 47 and 151 of C.P.C.) our Hon'ble High Court held that the dispute between the landlord and tenant under the Maharashtra Rent Control Act is tried and entertained under section 33.(*Sukhlal Bhiusan Dhobi (Suryawanshi -Vs- Vinayak Sadashiv Sangale and others, decided on 14.02.2014 in Civil Revision Application No.125 of 2005).*)

Similarly, section 41 of Presidency Small Cause Court Act deals with the dispute between the licensor and licensee.(*Prabhudas Damodar Kotecha -Vs- Manhabala Jeram Damodar and another, decided on 13.08.2013 SC. ,Ramesh Dwawrkadas Mehre -Vs- Indirawal Dwarkadas Mehre, reported in AIR 2001, Bom. Page 470. {suit against gratuitous licensor and licensee is not tenable before Presidency Small Cause Court under section 41/1}.Bhagirathi Lingawade and others -Vs- Laxmi Silk Mills (unreported) decided on 03.09.1993.*)

Suit on enforceable of right based on the lease agreement to perform the obligation not excluded the original jurisdiction of Hon'ble High Court under section 33 of Maharashtra Rent Control Act. (*Navyug Co-operative Society -Vs- Vile Parle Kelwani Mandal, 2005(3) BCR.at page-579*)

The suit between the gratuitous licensor and licensee is maintainable before the Presidency Small Cause Court and earlier view that suit between gratuitous licensor is tried by City Civil Court is set aside.(*Civil Appeal No.6726-6727 of 2013, Prabhudas Damodar Kotecha -Vs- Manhabala Jeram Damodar and another, decided on 13.08.2013 SC.*)

The suit between the landlord and tenant is exclusiveiy triable by the Presidency Small Cause Court in Bombay. (*Sutar Pukkray Somtaji -Vs- Mrs.Yallubai Malappa Wagle, AIR 2003 Bom. Page 81).*)

Similarly, the Civil Court is barred to try and to entertain the suit regarding rights arising out of the dispute between workers and management which which deals under standing order. (*AIR. 2010SC 2662, R.S.R.T.C. & others -Vs- Deen Dayal Sharma).*)

**Maharashtra Co-operative Society Act :**

Section 163 MCS Act only excludes the jurisdiction of the Civil Court with reference to the disputes arising out of the registration,management ,dissolution, winding up of society and any disputes which is required to be referred to the Co-operative Court under Section 91. (Margret Almeida and Ors. etc. etc. Vs. The Bombay Catholic Co-operative Housing Society Ltd. and Ors. etc. etc)

2013(1)ALLMR(SC)914). Section 91(3) of Maharashtra Co-operative societies Act expressly bars jurisdiction of the Civil Court in respect of the matters touching to the constitution, conduct of general meetings, management or business any of a society if filed by or against any society, or member, surety of member or any other society or its liquidator.

c) **Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act,1971 :**

Section 42 provides for bar of jurisdiction of Civil Court in respect of matters which the administrator, competent authority or tribunal is empowered to determine under this Act and further provides that no Court or other authority shall have the power to grant any injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. This is to facilitate the speedy execution of the slum improvement and clearance Act.

In the case of Laxmi Ram Pawar Vs. Sitabai Dhotre reported in AIR 2011 SC 450, Hon'ble Apex Court observed that, once it is held that a trespasser is included in the definition of 'occupier' in Section 2(e)(v) of the 1971 Act, what necessarily follows is that before initiation of any suit or proceeding for eviction of such trespasser, the previous written permission of the Competent Authority is required as mandated by Section 22(1).

5. **M.R.T.P. Act & Land Acquisition Act.**

A] Maharashtra Regional and Town Planning Act, 1966 :

Section 149 of MRTP Act provides that every order passed or direction issued by the State Government or order passed or notice issued by any Regional board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings.

The jurisdiction of the Civil Court is expressly and clearly excluded under Section 149 of the M.R.T.P. Act. Object of the exclusion of the jurisdiction of the Civil Court under Section 149 appears to be avoiding unnecessary litigation in respect of any order or notice that may be issued under the M.R.T.P. Act in respect of any acts, which are required to be done by different authorities under the M.R.T.P. Act {Kalyan Dombivli Municipal ... vs Shri Prakash Mutha ,2008 (3) MhLJ 686 }.

Recently our Hon'ble High Court in the case of Kishor Vs. The Municipal Commissioner and Ors. vide Second Appeal No. 491 of

2012 decided on 20.01.2015 reported in MANU/MH/0213/2015 while discussing the provisions of section 53(1) R/w. 149 of said Act observed that Provisions of Section 53(1) of the said Act prescribe period of not less than one month for taking necessary steps. If the jurisdiction of the Civil Court is invoked for considering the validity of such notice on the ground that the same prescribes a lesser period than that prescribed by the statute and hence clearly contrary to the statute, then the jurisdiction of the Civil Court will not be barred .

**B] Land Acquisition Act 1894 :**

In the case of *State of Bihar v. Dhirendra Kumar, AIR 1995 SC 1955* Hon'ble Apex Court observed that, the Act is a complete code in itself and is meant to serve public purpose. By necessary implication the power of the civil court to take cognizance of the case under Section 9 of CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, except by the High Court in a proceeding under Article 226 of the Constitution.

The scheme of Land Acquisition Act in the light of Section 34 thereof will not bar the jurisdiction of the Civil Court to entertain demand of interest (Executive Engineer Vs. Bhagwan Yashwanta Kulkarni and Anr. 2009(4) MhLJ 593 ) .

**Family Court Act :**

The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. From a perusal of the Statement of Object and Reasons, it appears that the said Act, inter alia, seeks to exclusively provide within the jurisdiction of the Family Courts the matters relating to the property of the spouses or either of them. Section 7 of the Act provides for the jurisdiction of the Family Court in respect of suits and proceedings as referred to in the Explanation appended thereto..... It is now a well-settled principle of law that the jurisdiction of a court created specially for resolution of disputes of certain kinds should be construed liberally (*K.A. Abdul Jaleel Vs. T.A. Shahida AIR 2003 SC 2525* ).

**Bombay Public Trust Act and Wakf Board Act :**

**Bombay Public Trust Act :**

In the case of Church of North India Vs.Lavajibhai AIR 2005 SC 2544 Hon'ble Apex Court observed that ,the bar of jurisdiction created under Section 80 of the Act clearly points out that a third party cannot maintain a suit so as to avoid the rigours of the provisions of the Act. The matter, however, would be different if the property is not a trust property in the eye of law. The civil court's jurisdiction may not be barred as it gives rise to a jurisdictional question. If a property did not validly vest in a trust or if a trust itself is not valid in law, the authorities under the Act will have no jurisdiction to determine the said question.

The Civil Court will have no jurisdiction in relation to a matter where over the statutory authorities have the requisite jurisdiction. On the other hand, if a question arises, which is outside the purview of the Act or in relation to a matter, unconnected with the administration or possession of the trust property, the Civil Court may have jurisdiction.

**In view of the conjoint reading of Sections 79 and 80 of the Act** is that if a particular question is under Sec.79 to be decided by the Charity Commissioner or his Assistant or by the Courts in appeal, the jurisdiction of a Civil Court to decide that question is expressly ousted by Sec.80.

As per section 51 of the Act, the prior permission of Charity Commissioner is required to institute civil suits of nature specified in section 50 of the Act. (***Vinodkumar Malviya..vs.. Maganlal Mangaldas Gameti and others, 2006 9 SCC 282.*** )

**Wakf Board Act :** Section 85 of the Wakf Act, Bar Jurisdiction of Civil Courts. It lays down that no suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

In the case of Ramesh Gobindram (dead) through L.Rs. vs. Sugra Humayun Mirza Wakf reported in AIR 2010 SC 2897 Hon'ble Apex Court observed that, a suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the Civil Court and not before the Tribunal.

**MPID and Industrial and Labour Laws:**

The *Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act 1999* came into force on dated 29 April, 1999.

This is a special legislation which prescribed two procedure to give effect to protect the interest of depositors of the financial establishment and matters relating thereto.

It is the distinct quality of this Act, that the designated court, act as a civil Court for attachment of the property and used summary procedure as contemplated u/o.37 of C.P.C. and the designated court act as a Magistrate for the trial of accused u/s.3 of the said Act and followed the procedure prescribed in Cr.P.C. for the warrant trial. Section 6(3) provides for transfer of cases as on the date of Act came into force.

There is no explicit bar under this Act to the Civil Court but the issue of jurisdiction required to be framed and determined as a preliminary issue under the provisions of section 9 (A) of C.P.C. because, this is a special legislation which provides special procedure to protect the interest of depositors of financial establishment and matters relating there to.

**Labour and Industrial Laws :**

The object of introducing Labour and Industrial Laws to protect and safeguard the rights and interest of the employers and the employees and also to maintain, check and balance between them in respect of their right, duties and responsibility and to provide speedy and in expensable effective forum. The jurisdiction of Labour and Industrial Court are divided on the basis of the work, nature of duties and surrounding circumstances in different forums.

The Industrial Disputes Act, particularly section 7, 7-A, 10-A reference deals with provisions of jurisdiction. Similarly, sections 5, 7, 28, 30 R/W. Sections 32 Schedule-I to IV of MRT. and PULP. Act, empowered the jurisdiction of Labour and Industrial Courts to try and entertain the complaints and application. Even, alternate forum is also made for the benefit of workman under section 20 of Minimum Wages Act, 1948 but debarred under section 24.

In the case of **The Premier Automobiles Ltd. Vs. Kamlekar Wadke reported in AIR 1975 SC 2238**, Hon'ble Apex Court (Three Judges Bench) laid down the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute as under:

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created Under the Act. then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute. as the case may be.

Section of MRTU & PULP Act expressly bar the jurisdiction of Civil Court. Similarly, if alternate remedy is available then the parties can seek benefit under the Industrial Disputes Act particularly, section 33 (c-ii) of Industrial Disputes Act or section 22 of Payment of Wages Act and both have jurisdiction to try but the principles of Election Application. (*Meghram Radheshyam Reddy -Vs- Shri Bharti Vlu Bus Services and others, decided on 05.08.1985*).

Though the Labour Court or Industrial Court is empowered to decide the issue pertaining to termination, removal, dismissal and discharge between the employee and employer however, by virtue of enactment of section 59 of Maharashtra University Act now jurisdiction of Labour and Industrial Court between the employee and employer (teaching or non-teaching) excluded by necessary implementation and it is vested to University Tribunal. (*O.S. Allahmohammad Yakub -Vs- Principal of Art and Science College, Paras, Mumbai, 2001(2) Mh.L.J., page 72*).

While exercising the jurisdiction under section 44 of MRT and

PULP. Act the Industrial Court can exercise the power of superintendent but it cannot exercise the appellate jurisdiction by re-appreciating the evidence of the trial court but it restricted to the erroneous findings. (*Vithal Godlu Marathe -Vs- M.S.R.T.C. And others, 1995(1) C.L.R. Page 854, Past Control India Pvt. Ltd. -Vs- Past Control India Pvt.Ltd. Employees of India Union and others, 1994(1) CLR, page 230. Director of Horticultural Punjab -Vs- Jagjivan Prasad, reported in 2001(2) SC. 539, Maharashtra Road Transport Corporation -Vs- Abdul Usman Mohammad Shaikh, 2000(3) CLR. Page 320, AIR 2004 SCC. 3892, Ranjit Singh -vs- Ravi Prasad, 2001(1), page 726, Bhomiraj -Vs- Divisional Controller, Bombay. Taresh -Vs- Ramesh, reported in 2015(2) Mh.L.J. Page 164, AIR. 2004 S.C., Ranjit Singh -Vs- Raviprasad, 2011(1) M.L.J., page 2726, Bhomiraj Parate -Vs- Divisional Controller, M.S.R.T.C., Nagpur. )*

Section 10-A of Industrial Disputes Act which empowers the Industrial and Labour Court to deals and decide the reference referred by the Government but the court is not empowered to on the complaint of the parties to entertain the reference. Similarly, the dispute between the employer and employee is governed by the School Tribunal and Civil Court is debarred to grant declaration that the company is sick Industry Unit, jurisdiction is exclusively exercised under the provisions of BIFR.

33] The original jurisdiction of the High Court is under Trade Mark Merchandize Act under section 105, City Civil Court is excluded for exercise the jurisdiction though it is of civil in nature. (***Mohan -Vs- Pravin, 1987 Mh.L.J. 503***).

9. **SARFEESI and Consumer Protection Act:**

**Ouster of Jurisdiction:-**

Section 34 of SARFEESI Act bars jurisdiction of Civil Court. The expression 'in respect of any matter' referred to in Section 34 contemplate the 'measures' provided under section 13 (4) of the Act. If any aggrieved person has got any grievance against any 'measures' taken under section 13 (4), the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The prohibition covers even matters which can be taken cognizance of by the DRT though no measure in that direction has so far been taken under Sub-section 13 (4). (*Mardia Chemicals Ltd. and*

*Others vs. Union of India and Others* AIR 2004 SC 2371; *Jagdish Singh Vs Hiralal & ors* AIR 2014 SC371; *Akola Urban Co-operative Bank Ltd. and Anr. Vs Anurag Anilkumar Rathi and Ors.* 2005(3) ALLMR 87; *Yuth Development Co-Operative Bank Ltd vs Balasaheb Dinkarrao Salokhe and Ors* AIR 2008 Bom 167; *Standard Chartered Bank vs Dharmindar Bhohi* 2013 (12) SCALE 124). If remedy is available under the special Act, the suit would not be entertained by the Civil Court. (*Smt. Savita Bhagwantrao Patil vs Shyam Pukhraj Asopa* 2015(1)ALL MR 187). So also, a Civil Court cannot grant the injunction to prevent an action to be taken under this Act by the secured creditor. ( *Harshad Govardhan Sondagar vs International Assets Reconatruction Cmpnay Ltd* (2014) 6 SCC 1).

Where statutory remedies are available under a fiscal statute then exercise of jurisdiction even under Article 226 is also not warranted. (*United Bank of India Vs. Satyawati Tondon* AIR 2010 SC 3413).

**Jurisdiction when not ousted:**

To a very limited extent jurisdiction of the Civil Court can be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe to the extent the scope is permissible to bring an action in the Civil Court in the cases of English mortgages. (*Mardia Chemicals Ltd. and Others vs. Union of India and Others* AIR 2004 SC 2371). However, mere use of word 'systemic fraud' would not be sufficient to bring the case within exception carved out in Mardia Chemicals case. (*Jagdish Singh Vs Hiralal & ors* AIR2014 SC 371). Jurisdiction of civil court in respect of matter which does not fall under section 17, 18 of the Act is not ousted. ( *SBI vs Sagar Deshmukh & Ors* 2011 (3) Mh.L.J 71).

**Consumer Protection Act :**

Section 3 of Consumer Protection Act does not bar the jurisdiction of civil court. It provides for remedy in addition to and not in derogation of any other law. In *State of Karnataka vs. Vishwabarathi House Building Coop. Society and Ors* reported in AIR 2003 SC 1043 Hon'ble Apex Court observed that, by reason of the provisions of Section 3 of the Act, it is evident that remedies provided thereunder are not in derogation of those provided under other laws. The said Act supplement and not supplants the jurisdiction of the civil courts or other statutory authorities. The said Act provides for a further safeguard to the effect that in the event a complaint

involves complicated issues requiring recording of evidence of experts, the complainant would be at liberty approach the civil court for appropriate relief. The right of the consumer to approach the civil court for necessary relief has, therefore, been provided under the Act itself.

Consumer Forum has jurisdiction to entertain a complaint despite the fact that the other forums/courts would also have jurisdiction to adjudicate upon the lis. [ *Fait Air Engineers v. N.K. Modi* AIR 1997 SC 533 and *Satpal Mohindra v. Surindra Timber Stores* (1999)5SCC696] .

10. **Fragmentation and Consolidation Act, BTAL Act and Revenue Act:**

**Fragmentation and Consolidation Act** : Section [36-A](#) mentions that no Civil Court or Mamlatdar's Court has jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority. Sub-section (2) of that section mentions that no order of the State Government or any such officer or authority made under the Act shall be questioned in any Civil, Criminal or Mamlatdar's Court. ( [Shevantabai Maruti Kalhatkar vs. Ramu Rakhamaji Kalhatkar & Anr.](#) AIR 1999 SC 2628, [Prabhakar Kushaba Hagwane and Ors. vs. Yashwant Bhau Hagwane since deed by his heirs and legal representatives.](#) 1993MhLJ1291. ).

In the case of ***Bhatiya International ....vrs. .... Bulk Trading S.A.*** AIR, 2002 SC 1432 it was held that while examining a particular provision of a statute to find out whether the jurisdiction of Court is ousted or not, the principle universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the court arrives at the same when such conclusion is the only conclusion.

In [Yeshwant Ramchandra Dhumal deceased by L.Rs. vs. Shri Shankar Maruti Dhumal and Anr.](#) AIR 2001 Bom 384 Hon'ble Bombay High Court observed that „Having regard to the scheme of the present Act, the Jurisdiction of Civil Courts is barred by Section [36-A](#) of the Act where the question is one relating to putting a owner in possession of the holding to which he is entitled under the scheme.

Section 36B prescribed the procedure for such decision of such question as referred in section 36A.

**Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, :**

In Madhav Kesu Khuspe vs. Sundrabai Mugutrao Phadatare since deceased by heirs Krishna Dagdu Khuspe and others", 1978 Mh.L.J. Page 289 it was held that the enquiry in breach of the provisions of section 32-G and in violation of the principles of natural justice being a nullity and without jurisdiction, the order passed could be challenged in the Civil Court and the consequential possession of the landlady being illegal, the suit for possession was maintainable and that though appellants had appealed to Tenancy Appellate Court and the appeal was dismissed, Civil Court's jurisdiction was not taken away.

Section 124 of this Act provides that , no Civil Court shall have jurisdiction to settle, decide or deal with any question including a question whether a person is, or was at any time in the past, a tenant and whether the ownership of any land is transferred to, and vests in, a tenant which is by or under this Act required to be settled, decided or dealt with by the Tahsildar or Tribunal, a Manager, the Collector or the-Maharashtra Revenue Tribunal. Section 125 mandate that the Civil Court shall stay the suit and refer such issues to such competent authority for determination.

Maharashtra Land Revenue Code and Maharashtra Revenue Jurisdiction Act :

Section 36C MLR Code provides that, no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under Sections 36, 36A or 36B required to be settled, decided or dealt with by the Collector.

Section 158 of MLR Code provides that no suit shall lie against the State Government or any officer of the State Government in respect of a claim to have an entry made in any record or register that is maintained under Chapter X or to have any entry omitted or amended.

Maharashtra Revenue Jurisdiction Act enacted to limit the jurisdiction of the Civil Courts throughout the State of Maharashtra in matters relating to the land revenue and for other ancillary purpose. Section 4 provides bar of certain suits. Section 5 saves certain classes of suits entertainable by Civil Courts. Section 11 provides that certain suits shall not be entertained by the Civil Courts unless the plaintiff has exhausted the right of appeal as provided in section 247 of MLR Code.{ Gopinath Ganpatrao Pensalwar Vs. State of Maharashtra & anr,2006 (6) All.M.R.504( F.B.) }

11. **Motor Vehicle Act 1988** :

On the establishment of a Claims Tribunal in terms of Section 165 of the Motor Vehicles Act, 1988, the victim of a motor accident has a right to apply for compensation in terms of Section 166 of that Act before that Tribunal. On the establishment of the Claims Tribunal, the jurisdiction of the Civil Court to entertain a claim for compensation arising out of a motor accident, stands ousted by Section 175 of that Act. Until the establishment of the Tribunal, the claim had to be enforced through the Civil Court as a claim in tort. The exclusiveness of the jurisdiction of the Motor Accidents Claims Tribunal is taken away by Section 167 of the Motor Vehicles Act in one instance, when the claim could also fall under the Workmen's Compensation Act, 1923. That Section provides that death or bodily injury arising out of a motor accident which may also give rise to a claim for compensation under the Workmen's Compensation Act, can be enforced through the authorities under that Act, the option in that behalf being with the victim or his representative. But Section 167 makes it clear that a claim could not be maintained under both the Acts ( National Insurance Company Vs. Mastan AIR 2006 SC 577 ).

Shivaji Dayanu Patil Vs Vatschala Uttam More reported in AIR 1991SC1769 it was observed by Hon'ble Supreme Court that compensation for any accident occurring as a result of the use of a motor vehicle was to be claimed before the Motor Accident Claims Tribunal as per section 165 read with section 175 of the Motor Vehicle Act 1988.

Submitted with due respect.

(O.P. Jaiswal)  
District Judge- 1  
Amti.

(Mrs. S.S. Bhishma)  
District Judge- 5  
Amti.

(S.S.Oza )  
C.J.M., Amti.

(L.S. Padhen)  
Jt.C.J.J.D.,  
Amti.

(Ms.P.B. Yerlekar)  
Jt. C.J.J.D.,  
Amti.

