

DISTRICT & SESSIONS COURT
RAIGAD ALIBAG

Summary of Workshop papers of Judicial Officers
on Ouster of Jurisdiction of Civil Court, When to be Inferred :

Sr.No.	Caption	Page No.
1	MEANING OF JURISDICTION AND PROVISIONS UNDER CIVIL PROCEDURE CODE :	1 to 4
2	MAHARASHTRA AMENDMENT ACT : SECTION 9A R.W. ORDER 14 RULE 2 OF C.P.C. :	4 to 5
3	OBJECTION AS TO JURISDICTION & TEST OF EXCLUSION OF JURISDICTION :	5 to 6
4	TYPES OF JURISDICTION : OUSTER OF JURISDICTION, EXPRESSLY AND IMPLIEDLY BAR :	6 to 11
5	CONCLUSION	11 to 12

MEANING OF JURISDICTION AND PROVISIONS UNDER CIVIL PROCEDURE CODE :

The word jurisdiction is derived from latin terms "Juris" and "dicto" which means " I speak by law". Jurisdiction may be defined to be the power of the Court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it. A jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for it's decision.

JURISDICTION UNDER CIVIL PROCEDURE CODE

2. A Civil Court has jurisdiction to try a suit, if two conditions are fulfilled. First one is that a suit must of a Civil nature; and second one is that the cognizance of such suit should not have been expressly or impliedly barred. As a necessary corollary to this it follows that a Court cannot entertain a suit which is not of Civil nature.

3. The explanations appended to Section 9 of the Civil Procedure Code throw some light to find out approximate answer to this question. The Explanation (1) makes it clear that a suit in which the right of property or an office is contested is a suit of Civil nature notwithstanding that such right may depend entirely on decision of questions as to religious rites or ceremonies. The Explanation (II) makes it further clear that, it is immaterial whether or not any fees are attached to the office referred to in Explanation (I) or whether or not such office is attached to a particular place.

4. Landmark Judgment of Dhulabai etc. Vs. State of Madhya Pradesh and others, A.I.R. 1969 S.C. 78 (Constitutional Bench).

While discussing the provision of section 9 of the Civil Procedure Code laid down the law as under :

1. Where the statute gives finality to the orders of the Special Tribunal, 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 a 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 on the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or sufficiency of the remedies provided may be relevant but not decisive to sustain the jurisdiction of the Civil Court. 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 later case, it is necessary if the statute creates a special right or liability and provides for the determination of the right or liability and further lays down that all question about the said right or shall be determined by the tribunals so constituted, and whether remedies normally associated with action in Civil Courts are prescribed by the said statute or not.
3. Challenges to the provisions of the particular Act as ultra vires cannot be brought before the tribunals constituted under the Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.
4. 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 within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

5. Where the particular Act contains no machinery for a refund of the tax collected in excess of constitutional limits or illegally collected, a suit lies.
6. 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 inquiry.
7. An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions set out above apply.

5. In case of Abdul Gafur Vs. State of Uttarkhand, 2008 (10) SCC 97, the same view has been expressed that, as per sec. 9 of the Civil Procedure Code, 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, however frivolous the claim may be, unless it is barred by a statute.

6. The principles applicable to the jurisdiction of the Civil Court in relation to an Industrial Dispute has been laid down in Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke, 1976 SCR(1) 427 in the following manner.

1. If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act and the remedy lies only in 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 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 33 C or the raising of an industrial dispute, as the case may be.

7. In Rajasthan SRTC Vs. Bal Mukund (2009) 4 SCC 299, the Hon'ble Supreme Court observed :

"There is a presumption that a Civil Court has jurisdiction. Ouster of Civil Court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where jurisdiction of a Civil Court is sought to be barred under a statute, the Civil Court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction".

MAHARASHTRA AMENDMENT ACT :
SECTION 9A R.W. ORDER 14 RULE 2 OF C.P.C. :

8. The amended 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.

9. The recent ruling of Hon'ble Apex Court reported in case of *Foreshore Co-operative Housing Society Ltd. Vs. Praveen D. Desai, AIR 2015 Supreme Court, 2006*, ruled that Section 9A is mandatory in nature and makes a complete departure from the procedure provided under O. 14 R. 2 of the Civil Procedure Code. In the other words, the non-obstante clause inserted by Maharashtra Amendment Act of 1977 in Section 9A and the express mandate of the section, the intention of the Law is to decide the issue relating to jurisdiction of the Court preliminary issue notwithstanding the provision contained in O. 14 Rule 2 of the Civil Procedure Code.

10. *Order 14 Rule 2(2)* of the Civil Procedure Code 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 issue regarding jurisdiction of the Court and the bar to a suit created by any Law for the time being in force when such issue can be disposed of a issue of Law only.

**OBJECTION AS TO JURISDICTION
& TEST OF EXCLUSION OF JURISDICTION :**

11. Section 21 of the Civil Procedure Code provides for objections to jurisdiction. If jurisdiction of a Court is objected, importance is given to such objections and it is tried to be decided at the earliest and in any case at

or before settlement of issues. The Law is well settled on the point that if such objections is not taken at the earliest, it can not be allowed to be taken at a subsequent stage.

THE TEST OF EXCLUSION OF JURISDICTION OF CIVIL COURT

12. The test adopted in examining such question is that -

i) whether the legislature intent to exclude arises explicitly or by necessary implication, and ii) whether the statute in questions provide for adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions. The last but not least where a statutory enactment only creates rights/liabilities, but does not provide remedial forum, the doors of the Civil Court are always open.

TYPES OF JURISDICTION : OUSTER OF JURISDICTION, EXPRESSLY AND IMPLIEDLY BAR :

(A) Pecuniary Jurisdiction

(B) Subject-wise jurisdiction

(C) Ouster of Territorial Jurisdiction.

(A) PECUNIARY JURISDICTION :

Section 15 of the Civil Procedure Code 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 where the subject matter does not exceed its amount or value Five lakh rupees. On the other hand, Civil Judge, Senior Division enjoys unlimited pecuniary jurisdiction. The jurisdiction of Appellate Court lies with District Judge when valuation of appeal does not exceed Rs. 1 crore. The jurisdiction of Hon'ble Appellate Court lies with Hon'ble High Court when valuation of appeal exceeds Rs. 1 crore.

(B) **SUBJECT-WISE JURISDICTION :**

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.

(C) **OUSTER OF TERRITORIAL JURISDICTION :**

Sections 16 to 20 of the Civil Procedure Code 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 Civil Procedure Code is a residuary provision and covers all cases not falling under Sections 16 to 19.

Section 16 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. (Harshad Chiman Lal Modi Vs. DLF Universal AIR 2005 SC 4446).

EXAMPLES OF OUSTER OF JURISDICTION :

1. Sec. 163 of Maharashtra Co-operative Society Act.
2. Sec. 42 of Maharashtra Slum Areas (Improvement Clearance and Re-development) Act, 1971.
3. Sec. 149 of Maharashtra Regional Town Planning & Land Acquisition Act.
4. Sec. 7 of Family Court Act.
5. Sec. 79 and 80 of Bombay Police Act.
6. Sec. 85 of Walk Board Act.
7. Sec. 34 of SARFEESI and Consumer Protection Act.
8. Sec. 3 of Consumer Protection Act.

EXPRESS BAR :

A suit is said to be "expressly barred" when it is so by any enactment for the time being in force. It is open to a competent legislature to bar jurisdiction of Civil Courts with respect to a particular class of suits of a Civil nature, provided that, in doing so, it keeps itself within the field of legislation conferred on it and does not contravene any provision of the Constitution. But every presumption should be made in favour of the jurisdiction of a Civil Court and the provision of exclusion of jurisdiction of a Court must be strictly construed. If there is any doubt about the ousting of jurisdiction of a Civil Court, the Court will lean to an interpretation which would maintain the jurisdiction. Thus, matters falling within the exclusive jurisdiction of Revenue Courts or under the Code of Criminal Procedure or matters dealt with by Special Tribunals under the relevant statutes, e.g. by Industrial Tribunal, Income Tax Tribunal, Revenue

Tribunal, Electronic Tribunal, Rent Tribunal, Co-operative Tribunal etc. or by Domestic Tribunal, e.g. Bar Council, Medical Council, University, Club etc. are expressly barred from the cognizance of a Civil Court. But if the remedy provided by a statute is not adequate and all questions cannot be decided by a Special Tribunal, the jurisdiction of a Civil Court is not barred. Similarly, when a Court of limited jurisdiction prima facie and incidentally states something, the jurisdiction of a Civil Court to finally decide the time is not ousted.

IMPLIED BAR :

A suit is said to be "impliedly barred", when it is barred by general principles of law and equity. "Impliedly barred" also means, it is barred on the ground of public policy. An important rule of interpretation is that, where a statute provides for special remedy in respect of injury suffered by reason of the exercise of the power of the statute the jurisdiction of the ordinary Courts is barred. Exclusion of jurisdiction of Civil Court by necessary implication means, where a right is created by statute, and a method of enforcing the right or of redressing grievance caused in the exercise of enforcement of the right is pointed out by the statute creating such right, then the general remedy of suit will be impliedly barred. In other words, where a special Tribunal or a public body is created by or under the authority of an act of legislature for the purpose of determining questions as to rights which are the creations of the particular Act, then the jurisdiction of that Tribunal or that body is, unless provided otherwise, exclusive and the Civil Courts cannot take cognizance of such matters.

To take example of Land Acquisition Act, which is complete Code in itself and is meant to serve public purpose by necessary implication, the power of Civil Court to take cognizance of the case under

Section 9 of the Civil Procedure Code 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, declaration under Section 6 and subsequent proceedings except by the High Court in a proceeding under Article 226 of the Constitution. It is thus clear that the Civil Court is devoid of jurisdiction to give declaration or even bare injunction being granted on the invalidity of the procedure contemplated under the Act. The only right available for the aggrieved person is to approach the High Court under Article 226 and this Court under Article 136 with self imposed restrictions on their exercise of extraordinary power.

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 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 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 1991 SC 1769, 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 r/w sec. 175 of the Motor Vehicles Act, 1988.

In the same way the dispute relating to permissions or orders granted by any Municipal authority regarding a technical aspect of permission or its revocation etc. The Bombay Provincial Municipal Corporation Act along with the Maharashtra State Town Planning Act prescribes an independent machinery for filing an appeal. Intention behind it is that such authority is well versed with the technical aspects and having technical assistance. Therefore, in such cases jurisdiction of Civil Court is impliedly barred. Disputes under Labour Laws. Injunctions are claimed by employer against employee or vice versa in Civil Court. The bundle of facts given are relating to disputes of either trade unions or employee or employer. If such injunction is claimed in Labour Court, then it can be granted. Thus, here the jurisdiction of Civil Court is impliedly barred.

CONCLUSION :

In the light of discussion, supra we may safely draw the following conclusions :

Notwithstanding of the bar placed by the legislature over the jurisdiction of the Civil Court, the Civil Court may take cognizance of case in the following circumstances;

1. When the order/action has been taken in mala fide and malicious manner.
2. When the order has been passed or authority has been exercised in excess of jurisdiction or without jurisdiction.
3. When serious question of fact is involved which cannot be

decided without recording the evidence.

4. When the aggrieved person has become remedy less due to non-availability of appellate authority.

Finally it can be said that a decree passed by Court without jurisdiction is a nullity and the validity thereof can be challenged at any stage of the proceedings, in execution proceedings or even in collateral proceedings. Consent can neither confer nor take away jurisdiction of a Court. Every Court has inherent power to decide the question of its own jurisdiction. Jurisdiction of a Court depends upon the averments made in a plaint and not upon the defense in a written statement. For deciding jurisdiction of a Court, substance of a matter and not its form is important. Every presumption should be made in favour of jurisdiction of a Civil Court. A statute ousting jurisdiction of a Court must be strictly construed. Burden of proof of exclusion of jurisdiction of a Court is on the party who asserts it.
