Brochure

on

# JURISDICTION OF CIVIL COURT

# &

# ITS BAR*

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**JTRI Auditorium**

## JURISDICTION OF CIVIL COURT AND ITS BAR

* Based almost exclusively on Supreme Court authorities

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**(uploaded on 12th January, 2016)**

# Synopsis

## 1. **Jurisdiction of Civil Court**

The jurisdiction of Civil Court is defined under Section 9 C.P.C. as follows:

> ***" Section 9:*** *Courts to try all civil suits unless barred: The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*
>
> *Explanation I.- A suit in which the right to property or to an office is contested is a suit of a civil nature, ……*

The Courts obviously mean Civil Courts as C.P.C. applies on Civil Courts only. The preamble of the C.P.C. is to the following effect:-

> '*An Act to consolidate and amend the laws relating to the procedure of the Courts of civil judicature.'*

Categories of Civil Courts are provided under Section 3 of Bengal, Agra, Assam Civil Courts (BAACC) Act 1887 as amended by U.P., as follows:

> 3. Classes of Courts:- There shall be the following classes of Civil Courts under this Act, namely:-
>
> (1) the Court of the District Judge;
>
> (2) the Court of the Additional Judge;
>
> (3) the Court of the Civil Judge;
>
> (4) the Court of the Munsif

By virtue of Section 2 of BAACC (Extension to Oudh) Act, 1955 (U.P. Act No. 2 of 1956) sections 3, 4,6,8, 9 to 11, 13 to 25, 38 and 39 and Section 40 (with some modifications) of BAACC Act have been made applicable to the territories to which Oudh Courts Act 1925 is applicable and corresponding provisions of Oudh Courts Act 1925 have been repealed. The result is that the Act applies to entire U.P.

Additional Judge means Additional District Judge (section 8). Civil Judge and Munsif have been re-designated as Civil Judge (Senior Division) and Civil Judge (Junior Division) pursuant to Supreme Court Judgment in *All India Judges' Association v. Union of India AIR 1992 SC 165* (paras 12 to 14). Court of Small Causes is constituted and Judge Small Causes Court (JSCC) is appointed under Sections 5 and 6 of Provincial Small Causes Courts Act. Section 7 and order 50 CPC refer to Small Causes Courts. See also synopsis 6 - JSCC or Civil Judge, cognizance of suit.

High Court is referred to at several places in C.P.C. e.g. sections 24, 100, 113, 115, 116 to 120 (part 9) and 122. Supreme Court is also referred in sections 109 and 112.

Section 9 only deals with the jurisdiction of the Court to try suit. However, for instituting a suit two pre-requisites must be fulfilled. The first requirement which is 'fundamental to the maintainability of a Civil Suit is the existence of a **cause of action**' as held in *Bharat Aluminum Co. v. Kaiser Aluminum Technical services Inc. 2012 (9) SCC 552*, para 173. The cause of action must be live; neither dead nor in the womb. In para 175 of the same authority it has been held that cause of action should not be contingent / speculative. If the plaint does not disclose a cause of action, it shall be rejected at the threshold under order 7 rule 11(a) C.P.C. It has also been held that suit only for temporary injunction is not maintainable.

The other pre requisite for instituting a suit is that the plaintiff must have **right to sue**. As far as right to sue is concerned it is a common law or inherent right. Unlike appeal right to sue need not be provided and has generally not been provided by any statute. Certain statutory provisions only recognize the right of aggrieved party to

institute suit. In *Ganga Bai v. Vijai Kumar, AIR 1974 SC 1126* para 15 it has been held as follows:

> "*There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit.*"

The above portion has been quoted with approval in *Abdul Gafur v. State of Uttrakhand AIR 2009 SC 413* (para 14). Same thing has been held in *Shiv Shakti Co-operative Housing Society v. S. Developers AIR 2003 SC 2434* (para 17).

In *Shiv Kumar Chadha v. Municipal Corpn. Of Delhi, 1993 (3) SCC 161* it was held that under classical law the position is that where there is a right there is a remedy. The position regarding special Acts creating rights and liabilities was also clarified in same para 11 which is quoted below:-

> *"11. In the olden days the source of most of the rights and liabilities could be traced to the common law. Then statutory enactments were few. Even such enactments only created rights or liabilities but seldom provided forums for remedies. The result was that any person having a grievance that he had been wronged or his right was being affected, could approach the ordinary Civil Court on the principle of law that where there is a right there is a remedy-ubi jus ibi remedium. As no internal remedy had been provided in the different statutes creating rights or liabilities, the ordinary Civil Courts had to examine the grievances in the light of*

*different statutes. With the concept of the Welfare State, it was realised that enactments creating liabilities in respect of payment of taxes obligations after vesting of estates and conferring rights on a class of citizens, should be complete codes by themselves. With that object in view, forums were created under the Acts themselves where grievances could be entertained on behalf of the persons aggrieved. Provisions were also made for appeals and revision to higher authorities."*

In this regard reference may also be made to the second principle mentioned in para 23 (quoted below) of *Premier Automobiles v. K.S. Wadke AIR 1975 SC 2238 (*which has also been quoted with approval in para 22 of *Rajasthan SRTC v. B.M. Bairwa 2009 (4) SCC 299*) where along with common law, general law was also mentioned.:

***"23.....***

***(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."*

A suit concerning right to property may be either for money or for specific relief. The former type of suits may be for recovery of money as money lent, monetary consideration for a contract, damages for breach of contract, damages for use and occupation of property particularly immovable property, damages for negligence or other torts and interest etc. The latter type of suits (specific relief) may be for recovery of movable or immovable property (sections 5 to 8 of Specific Relief Act), specific

performance of contract, (Sections 9 to 25), rectification of instruments (Section 26) recession of contract (Sections 31 to 33), declaration (Sections 34 and 35) and preventive relief in the form of injunction (Section 36 to 42). Prohibitory/preventive relief of injunction may be claimed either on the basis of a legal right independently of any agreement or based upon an agreement. Right of specific relief is also inherent in nature. Specific Relief Act only 'defines and amends the law relating to certain kinds of specific reliefs' (preamble to Specific Relief Act). The Act does not purport to create any right. Specific relief of a kind not covered by the Specific Relief Act is also an inherent right and may be pursued by an aggrieved person. In *Ramji Gupta v. Gopi Krishan Agrawal AIR 2013 SC 3099,* para 11, quoted below it has been held that there can be a declaration even out side the scope of the section 34:

> *11. We are not inclined to enter into the controversy regarding Section 34 of the Specific Relief Act, 1963, as it has been submitted that the remedy of declaration envisaged by the said provisions is not exhaustive, and that there can be a declaration even outside the scope of the said Section 34. In support of the said contention, submissions have been made on the basis of the judgments of this Court in Radha Rani Bhargava v. Hanuman Prasad Bhargava (deceased) thr. L.Rs. & Ors., AIR 1966 SC 216; and M/s. Supreme General Films Exchange Ltd. v. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar & Ors., AIR 1975 SC 1810."*

In fact, suit for possession is nothing but specific relief which has got nothing to do with Specific Relief Act (1963) which, in such case, by virtue of its sections 5 and 7, quoted below, relegate the parties to C.P.C. :

***"5.*** *Recovery of specific immovable property: A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908.*

***7.*** *Recovery of specific movable property**:** A person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908."*

Explanations – not relevant

Under Section 6 of the Act only such suit for possession is provided which is based only and only on prior possession and is instituted within six months from the date of dispossession.

Specific Relief Act contains rules of equity and justice; hence, its provisions are applicable to the areas to which the Act did not apply at the relevant time e.g. Sikkim *(Durga Prasad v. Palden Lama AIR 1981 Sikkim 41)*. A Division Bench of the Allahabad High Court in the case reported in *Kishore Chand Shiva Charan Lal v. Budaun Electrict Supply Co., AIR 1944 Allahabad 66(77)* has held that Specific Relief Act was enacted not to consolidate but only to define and amend the law relating to certain kinds of specific reliefs and though the Specific Relief Act may be exhaustive with regard to those matters which are specifically dealt with by that Act but not otherwise. This authority has been referred/ quoted with approval in *Hungerford Investment Trust Ltd. (In voluntary Liquidation) v. Haridas Mundhra,AIR 1972 SC 1826* which in turn has been referred to in Ashok *Kumar Srivastav v. National Insurance Company Ltd.,AIR 1998 SC 2046.*

Regarding exercise of equitable jurisdiction by Courts in India it has been held as follows in paras 21 and 22 of *Shiv Kumar Sharma v. Santosh Kumar, AIR 2008 SC 171*:

**21.** *In England, the Court of Equity exercises jurisdiction in equity. The courts of India do not possess any such exclusive jurisdiction. The Courts in India exercise jurisdiction both in equity as well as law but exercise of equity jurisdiction is always subject to the provisions of law. If exercise of equity jurisdiction would violate the express provisions contained in law, the same cannot be done. Equity jurisdiction can be exercised only when no law operates in the field.*

***22.*** *A court of law cannot exercise its discretionary jurisdiction dehors the statutory law. Its discretion must be exercised in terms of the existing statute.*

*In Shamsu Suhara Beevi v. G. Alex and another [(2004) 8 SCC 569], this Court, while dealing with a matter relating to grant of compensation by the High Court under Section 21 of the Specific Relief Act in addition to the relief of specific performance in the absence of prayer made to that effect either in the plaint or amending the same at any later stage of the proceedings to include the relief of compensation in addition to the relief of specific performance, observed:*

*"Grant of such a relief in the teeth of express provisions of the statute to the contrary is not permissible. On equitable consideration court cannot ignore or overlook the provisions of the statute. Equity must yield to law."*

## 2. Bar of Jurisdiction, general

As far as expressed bar mentioned in Section 9 C.P.C is concerned it does not create much difficulty. However, the problem arises in the case of implied bar of suit by some other Act. This question has exhaustively been dealt with by the Constitution Bench (5 judges) judgment of the Supreme Court reported in *Dhulabhai v. State of M.P., AIR 1969 SC 78.* In this regard Supreme Court enunciated 7 points which were summarized in para 32 of the judgment which is quoted below:-

> *"32. ……. The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-*
>
> *(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.*
>
> *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.*

*(3) 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.*

*(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 clearly 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 refund of 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 enquiry.*

*(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."*

The above authority has been followed in almost all the subsequent authorities on the point, which are innumerable, out of which the following three require special mention:

i) *Shiv Kumar Chadha v. Municipal Corporationof Delhi, 1993 (3) SCC 161* (Demolition of unauthorized constructions by municipal corporation) supra under synopsis 1.

ii) *Rajasthan SRTC v. Bal Mukund Bairwa (2) 2009 (4) SCC 299* (Labour matters and service disputes) infra under synopsis 11 and 12.

iii) *Ramesh Gobind Ram v. S.H.M. Waqf, AIR 2010 SC 2897* (Jurisdiction of tribunal Constituted under Waqf Act 1995 and / or of Civil Court infra under synopsis 13). After referring to the above authority of Rajasthan SRTC in para 6, general reference was made to other authorities taking similar view in para 7. Both the paras are quoted below:-

> *"6. Even in cases where the statute accords finality to the orders passed by the Tribunals, the Court will have to see whether the Tribunal has the power to grant the reliefs which the Civil Courts would normally grant in suits filed before them. If the answer is in negative exclusion of the Civil Courts jurisdiction would not be ordinarily inferred. In Rajasthan SRTC v. Bal Mukund Bairwa 2009(2) S.C.T. 244 : (2), (2009) 4 SCC 299, a three-Judge Bench of this 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."*

*7. To the same effect are the decisions of this Court in Pabbojan Tea Co. Ltd. v. Dy. Commr (1968) 1 SCR 260, Ramesh Chand Ardawatiya v. Anil Panjwani 2003(2) R.C.R.(Civil) 828 , Dhulabhai v. State of M.P. (1968) 3 SCR 662, Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536, State of A.P. v. Manjeti Laxmi Kantha Rao (2000) 3 SCC 689, Dhruv Green Field Ltd. v. Hukam Singh and Ors. 2002(3) R.C.R.(Civil) 690 : (2002) 6 SCC 416, Dwarka Prasad Agarwal v. Ramesh Chandra Agarwala, AIR 2003 SC 2696 and State of Tamil Nadu v. Ramalinga Samigal Madam AIR 1986 SC 794."*

Permission to institute suit:

No permission by any court even by Supreme Court should be granted for instituting a suit for the reason that if suit is maintainable, permission is superfluous and if the suit is not otherwise maintainable, permission cannot make it maintainable.

In *Rajasthan SRTC v. Bal Mukund Bairwa 2009 (4) SCC 299* (3 judges) it was held, following 7 judges Constitution Bench authority of *A.R. Antulay v. R.S. Nayak AIR 1988 SC 1531,* that if a court had no jurisdiction it could not be conferred jurisdiction even by

Supreme Court. Relevant portion of para 50 (of Rajasthan SRTC) is quoted below:-

> *"……either a Court has the requisite jurisdiction or it does not have. It is a well settled principle of law that the court cannot confer jurisdiction where there is none and neither can the parties confer jurisdiction upon a court by consent."*

In *S.K. Sharma v. S. Kumari, AIR 2008 SC 171* it has been held at the end of para 23 as follows:

> *"A civil court does not grant leave to file another suit. If the law permits, the plaintiff may file another suit but not on the basis of observations made by a* ***superior court****."*

However leave is required and may be granted under O. 2 R.2(3) and O. 23, R. 1(3).

In *Zuari Cement Ltd. v. Regional Director ESIC, Hydrabad, AIR 2015 SC 2764* the appellant sought exemption from the operation of Employees State Insurance Act (ESI Act) on its concern from the State Government which was refused. The refusal order was challenged through writ petition in the High Court. The High Court disposed of the writ petition with the direction to the appellant to approach ESI Court constituted under section 74. Thereafter the ESI Court granted the exemption holding that the Government had wrongly refused to grant exemption. The said order was set aside in appeal by the High Court. The Supreme Court confirmed the view of the High Court holding that the earlier order of the High Court permitting to raise the dispute before ESI Court was utterly wrong as jurisdiction cannot be conferred by a higher court. Before ESI Court the Government had not raised any objection regarding jurisdiction. In this regard also Supreme Court held that non-objection or consent cannot confer jurisdiction. It further held that the principle that if a thing is

required to be done in a particular manner then it shall be done only in that manner applies to administrative law as well as to the exercise of jurisdiction by courts. Para 14 is quoted below:-

> *"**14.** As per the scheme of the Act, appropriate government alone could grant or refuse exemption. When the statute prescribed the procedure for grant or refusal of exemption from the operation of the Act, it is to be done in that manner and not in any other manner. In State of Jharkhand and Others v. Ambay Cements and Another, (2005) 1 SCC 368, it was held that "It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way". In Babu Verghese and Others v. Bar Council of Kerala and Others, (1999) 3 SCC 422, it was held as under:*
>
> > *31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor, (45 LJCH 373) which was followed by Lord Roche in Nazir Ahmad v. King Emperor, (AIR 1936 PC 253) who stated as under:*
> >
> > *[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.*
> >
> > *32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of U.P., AIR 1954 SC 322 and again in Deep Chand v. State of Rajasthan (AIR 1961 SC 1527). These cases were considered by a three- Judge Bench of this Court in*

*State of U.P. v. Singhara Singh (AIR 1964 SC 358) and the rule laid down in Nazir Ahmad case (AIR 1936 PC 253) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognized as a salutary principle of administrative law."*

## 3. Plea regarding lack of jurisdiction/ Remedies against null and void decrees and orders

As a general principle if a court has got no jurisdiction to try and decide a suit, it cannot be conferred jurisdiction by consent, either express or implied (e.g. by absence of objection at appropriate time). A decree without jurisdiction is nullity and may be questioned at any stage including execution or even in collateral proceedings vide *Kiran Singh v. Chaman Paswan, AIR 1954 SC 340* (followed in innumerable authorities by the Supreme Court the latest being *Foreshore Co-operative Housing Society Limited v. Praveen D. Desai (Dead) AIR 2015 SC 2006*). In para 6 of *Kiran Singh* it was held as follows:-

> *"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, whether it is pecuniary or territorial or whether, it is in respect of the subject – matter of action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties". (*complete para 6 and para 7 quoted in Appendix B)

However it was further held in paras 6 and 7 of *Kiran Singh* that lack of pecuniary jurisdiction is an exception to the general principle in view of section 11 of Court Fees Act and a decree suffering from such defect *'is not to be treated as, what it would be but for the section, null and void'*. Same exception will apply to lack of territorial jurisdiction in view of section 21 C.P.C. (See next synopsis).

In *Chief Engineer Hydel Project v. Ravinder Nath, AIR 2008 SC 1315* order of termination of service of a workman was set aside in a suit which

decree was affirmed in First Appeal by ADJ and in Second Appeal by High Court. It was argued for the first time before the Supreme Court in SLP that civil court had no jurisdiction to decide the dispute and only labour Court had the jurisdiction with respect thereto. The Supreme Court permitted the argument to be raised and accepted the same. It was held in para 19 as follow:

> *"Once the original decree itself has been held to be without jurisdiction and hit by the doctrine of coram non judice, 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. It must, therefore, be held that the civil court in this case had no jurisdiction to deal with the suit and resultantly the judgments of the Trial Court. First Appellate Court and the Second Appellate Court are liable to be set aside for that reason alone and the appeal is liable to be allowed"*

In *Hasham Abbas Sayyad v. Usman Abbas Sayyad AIR 2007 SC 1077* ( relied upon in Chief Engineer, supra) after passing of preliminary decree in a partition suit an application for sale of the property in dispute was filed whereupon the property was sold through auction. Neither final decree had been passed nor even proceedings for the same had been initiated. The Supreme Court held that the sale was nullity as it could take place only in execution of final decree which had not even been passed and that the final decree if passed would have been appealable. Para 21 is quoted below:

> *"21. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res-judicata which are procedural in nature would have no application*

*in a case where an order has been passed by the Tribunal/ Court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice being a nullity, the same ordinarily should not be given effect to. (see Chief Justice of Andhra Pradesh and another v. L.V.A. Dikshitulu and others, AIR 1979 SC 193 & M.D. Army Welfare Housing Organization v. Sumangal Services (P) Ltd. (2004) 8 SCC 619)."*

(Both the above authorities placed reliance upon *HCL Modi v. DLF Universal AIR 2005 SC 4446* also which is discussed in detail in next synopsis)

In *Ramesh Chand Ardawatiya v. Anil Panjwani, AIR 2003 SC 2508* it was held in para 19 as follows:

***"19.*** *....Where there is a special tribunal conferred with jurisdiction or exclusive jurisdiction to try a particular class of cases even then the civil court can entertain a civil suit of that class on availability of a few grounds. An exclusion of jurisdiction of the civil court is not to be readily inferred. (See Dhulabhai v. State of M.P, (1968) 3 SCR 662) An objection as to the exclusion of the civil court's jurisdiction for availability of alternative forum should be taken before the trial court and at the earliest, failing which the higher court may refuse to entertain the plea in the absence of proof of prejudice."* (Underlining supplied)

It is submitted with respect that the last sentence (underlined) is firstly obiter as in the first sentence Civil Court had been held to have jurisdiction. Secondly, the observation has been made in passing. Thirdly the proposition is not correct and is directly in conflict with the above authorities. (Chief Engineer and Hasham Abbas)

Cases of lack of jurisdiction may broadly be divided into three categories. The first is of pecuniary and territorial jurisdiction. Such defect is not absolutely fatal and as per section 21 C.P.C. if objection is not raised at the earliest opportunity and there has not been failure of justice then lack of pecuniary or territorial jurisdiction will not vitiate the decree (see next synopsis). The next is of that type regarding which objection may be raised at late stage of the suit or even for the first time in appeal (e.g. bar of limitation) but not in execution or collateral proceedings (*Ittyavira Mathai v. Varkey Varkey, AIR 1964 SC 907* and *Bhawarlal Bhandari v. M/s. Universal Heavy Mechanical Lifting Enterprises AIR* 1999 SC 246, referred in *Balvant* (2004), infra). The distinction has aptly been described in first sentence of para 11 of *Dhurandhar Prasad 2001,* infra, as follows:

> *"**11**. In the case of Ittyavira Mathai v. Varkey Varkey and another, AIR 1964 Supreme Court 907, the question which fell for consideration before this Court was if a Court, having jurisdiction over the parties to the suit and subject matter thereof passes a decree in a suit which was barred by time, such a decree would come within the realm of nullity and the Court answered the question in the negative holding that such a decree cannot be treated to be nullity but at the highest be treated to be an illegal decree."*

The third type of jurisdictional defect, which may be described as jurisdictional defect of highest order, is such which renders the decree nullity and liable to be questioned even in execution or collateral proceedings. It is termed as lacking jurisdiction over the subject matter,

lacking competence of the Court to try the case or inherent lack of jurisdiction.

Para 23 of *Hasham Abbas*, supra, is quoted below:-

> ***"23.*** *We may, however hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the C.P.C.; and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with."*

Sometimes the distinction between the aforesaid types of defects in jurisdiction is rather thin.

Regarding jurisdiction if there is change of law during pendency of suit (or appeal), it will have to be taken into consideration. In *Lachmeshwar Prasad v. Keshwar Lal AIR 1941 FC 5* and *Pasupuleti Venkateswarlu v. Motor & General Traders AIR 1975 SC 1409* it has been held that change in law as well as material change in facts shall be taken note of even by the Highest Court. Whenever special Tribunal or Court is constituted provision for transfer of pending suits (or appeals) is made e.g. in Administrative Tribunal Act, Armed Forces Tribunal Act, Recovery of debts Due to Banks etc. Act. Similarly when pecuniary limit of jurisdiction is enhanced provision for transfer of pending cases is made. Conversely if Court had no jurisdiction when suit was instituted but due to change in law it acquires jurisdiction at the stage of trial, hearing or disposal, then it will have to decide the suit on merit vide *Sudhir G. Angur v. M. Sanjeev AIR 2006 SC 351.* Same principle will apply to applications including revisions vide *Shiv Shakti Coop. Housing Society, Nagpur v. M/s.*

*Swaraj Developers AIR 2003 SC 2434.* However right of appeal, which is a vested right, as available on date of institution of suit, cannot be curtailed by change of law vide *Videocon International v Securities & Exchange Board of India AIR 2015 SC 1042.*

In *Bajrang Lal Shiv Chandrai Ruia v. Shashi Kumar N. Ruia, AIR 2004 SC 2546* (3 judges) it was held that if auction sale by municipal corporation was *non est* and *void ab initio* (on the ground that the sale was held in contravention of the provisions of section 206 of Bombay Municipal Corporation Act and the Regulations made there under and also for the reason that sale certificate was issued not in favour of the person who was the highest bidder but in favour of another person who was not even shown to be one of the bidders), there was no need to initiate any proceedings against the sale and its nullity could be set forth as a ground in defence in a suit instituted by the auction purchaser on the basis of sale certificate and for such defence no limitation is there. It was held that bar of limitation precludes a plaintiff bringing a suit, however, as far as defence is concerned there is no such limitation (para 71). The High Court had held that the challenge to auction sale by way of defence was 'back door method'. The Supreme Court did not approve the observation. (paras 72 and 73)

In *Sardara Singh v. Sardara Singh, 1990 (4) SCC 90* (3 judges) (para 4) the auction sale had taken place under Punjab Land Revenue Act, 1887 relevant provisions of which (Sections 85, 86 and 88)were held to be analogous to rules 84 and 85 of Order 21 C.P.C. Three fourth amount had been deposited with one month's delay. Sale was held to be non-est, and no sale in the eye of law. It was further held that civil suit questioning the sale was maintainable in spite of provisions of bar of civil suit in the Punjab Land Revenue Act as action of revenue authorities of selling the

land was without jurisdiction. In *G.G. Mohata v. Fulchand, AIR 1997 SC 1812* and *C.N. Paramsivam v. Sunrise Plaza AIR 2013 SC 2941* also it has been held that such sale being null and void, it can be sought to be ignored in collateral proceedings by applicant or opposite party.

In *Indian Bank v. Mani Lal G.J. Khona AIR 2015 SC 1240* after placing reliance upon *Kiran Singh 1954* supra it was held that auction sale in execution being without jurisdiction hence void could be questioned anywhere, even in collateral proceedings. In the said case after passing of money decree but before execution, tribunal under Recovery of Debts Due to Banks etc. Act 1993 had been constituted, still property was sold in execution by the Court.

Apart from the above authorities, for detailed discussion of the point in question specific reference may be made to the following authorities, each of which has referred to several earlier authorities:

1. *Dhurandhar Prasad Singh v. J.P. University AIR 2001 SC 2552* holding that non impleadment of party under Order 22, Rule 10 CPC upon whom interest has devolved (except on death) does not render the decree nullity, and it cannot be questioned in execution. Placing reliance upon section 23 of Contract Act distinction was drown between void and voidable decrees. The powers under section 47 CPC were described as quite narrow and microscopic. In para 12, *Vasudev Dhanjibhai Modi v. Rajabhai Abdul RehmanAIR 1970 SC 1475*, was quoted holding that for questioning the decree in execution error of jurisdiction must be apparent on the face of the record not requiring examination of any disputed question. (Paras 12 to 15 and 21 to 23 quoted in Appendix B) This authority has extensively been quoted and followed in *Sharadamma v. M. Pyrejan AIR 2015 SC 3747.*

2. *Balavant N.Viswamitra v. Yadav Sadashiv Mule AIR 2004 SC 4377* (Paras 10 to 17 quoted in Appendix B)
3. *Sarup Singh v. Union of India AIR 2011 SC 514*. The High Court after deciding appeal in respect of market value of acquired property under Land Acquisition Act modified its decree in appeal on an application u/s 152 CPC and enhanced the rate of solatium and interest. The Supreme Court held that it could not be done and the modification was utterly without jurisdiction hence the ADJ rightly refused to execute the modified part of the decree. (paras 19 to 23 quoted in Appendix B)
4. *Indian Bank v. Manilal Govindji Khona AIR 2015 SC 1240* (para 14) discussed in detail in synopsis 10.

## 4. Pecuniary and Territorial Jurisdiction

For the purpose of this synopsis relevant sections of C.P.C. are Sections 15 to 21-A which are quoted in Appendix A.

According to section 15 suit is to be instituted before the Court of lowest grade. By virtue of Section 16 suit in respect of immovable property may be instituted before the court within whose territorial jurisdiction the property is situate. For such suits, place where cause of action arises or where defendant resides etc. is wholly irrelevant vide *Harshad Chiman Lal Modi v. D.L.F. Universal Ltd., AIR 2005 SC 4446.* In this authority proviso to section 16 (defendant's personal obedience) has also been considered and it has been held that, it has got very limited scope (Paras 14 to 17). Para 17 is quoted below:-

> *"**17.** In the instant case, the proviso has no application. The relief sought by the plaintiff is for specific performance of agreement respecting immovable property by directing the defendant no. 1 to execute sale deed in favour of the plaintiff and to deliver possession to him. The trial court was, therefore, right in holding that the suit was covered by clause (d) of section 16 of the code and the proviso had no application."*

Section 17 C.P.C. deals with suit for immovable property situate within jurisdiction of different Courts and Section 18 deals with place of institution of suit where local limits of jurisdiction of courts are uncertain. Section 19 deals with suits for compensation for wrongs to person or movables.

Other suits, in view of Section 20, may be instituted before the courts within whose jurisdiction either cause of action (wholly or in part) arises or defendant resides or carries on business or works for gain.

The phraseology used in of Section 20 (C) C.P.C. and article 226 (2) of the Constitution being in *pari materia* the decisions rendered on interpretation of former shall apply to the writ proceedings also vide *M/s Kusum Ingots & Alloys Ltd. v. Union of India, AIR 2004 SC 2321* (para 9).

Place of residence of plaintiff/ applicant is irrelevant for the purpose of jurisdiction. However, there are certain exceptions to this principle. By virtue of Section 166 (2) of the Motor Vehicles Act 1988 as amended in 1994 application for compensation there under may also be made at the option of the claimant before the Tribunal having jurisdiction over the area where the claimant resides (*Mantoo Sarkar v. Oriental Insurance Co. Ltd., AIR 2009 SC 1022* holding that for a migrant labour even temporary residence at the time of accident is sufficient to confer jurisdiction). Similar is the position under section 21 of Workmen's Compensation Act, 1923 (*Morgina Begum v. Managing Director, Hanuman Plantation Ltd., AIR 2008 SC 199*) and section 62(2) of Copy Right Act 1957 and section 134(2) of Trade Marks Act 1999 (*M/s. Dhodha House v. S.K. Maingi,AIR 2006 SC 730*)

Explanation to section 20 has been explained in *New Moga Transport Company v. United India Insurance Co. Ltd.,AIR 2004 SC 2154* (para 10). It has been held after placing reliance upon *Patel Roadways v. Prasad Trading Co. AIR 1992 SC 1514,* that if a corporation has got a principle office and also one or more subordinate offices and cause of action arises at a place where it has got a subordinate office then only that place will have jurisdiction and not the place where it has principal office. Para 10 is quoted below:-

> " **10**. *On a plain reading of the Explanation to Section 20, CPC it is clear that Explanation consists of two parts, (i) before the word "or" appearing between the words 'office in India" and the word "in*

*respect of" and the other thereafter. The Explanation applies to a defendant which is a Corporation which term would include even a company. The first part of the Explanation applies only to such Corporation which has its sole or principal office at a particular place. In that event, the Court within whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on business at that place, because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression "at such place" appearing in the Explanation and the word "or" which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the Court within whose jurisdiction it has a subordinate office which alone have the jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".*

Word corporation used in the explanation includes company also vide *Patel Roadways 1992,* supra, *new Moga Transport Co., 2004,* supra and *Indian P.R. Society, 2015,* infra.

The explanation to section 20 has been held applicable to plaintiff also in a suit instituted under Copyright Act 1957 and Trade Marks Act 1999 (under which suit may also be filed at the place where plaintiff resides, works for gain or carries on business,) even though section 62 of the Copyright Act and Section 134 of the Trade Marks Act use the words 'notwithstanding anything contained in C.P.C.' in *Indian Performing Rights*

*Society v. Sanjay Dalia AIR 2015 SC 3479.* Suit instituted at Delhi even though Head Office of plaintiff was at Maharashtra and entire cause of action also arose at Maharashtra was held to be not maintainable at Delhi merely on the ground that plaintiff's branch office was there.

Residence of defendant referred to in section 20 is preceded by the words 'at the time of Commencement of the suit.' Accordingly if at the time of institution of the suit defendant was not residing within the jurisdiction of the court, his subsequent act of residing there would not bring the suit within territorial jurisdiction of that court vide *Mohanakumaran Nair v. V. Janyakumaran Nair, AIR 2008 SC 213.*

Order 4 Rule 1(1) is as follows:-

> Suits to be commenced by plaint – (1) Every suit shall be instituted by presenting a plaint in duplicate to the Court.....

Accordingly commencement of suit and institution of suit is the same thing.

The words "carries on business" used in Section 20 on the one hand do not mean that merely because products of the defendant (or plaintiff as the case may be )are sold from a place he / it would be deemed to carry on business there from vide para 50 of *M/s Dhodha House v. S.K. Maingi AIR 2006 SC 730* quoted below:-

> ***50.*** *"The plaintiff was not a resident of Delhi. It has not been able to establish that it carries out business at Delhi. For our purpose the question as to whether the defendant* (sic. plaintiff) *had been selling its produce in Delhi or not is holly irrelevant. It is possible that the goods manufactured by the plaintiff are available in the market of Delhi or they are sold in Delhi but that by itself would not mean that plaintiff carries on any business in Delhi."*

(The said case arose under Copy Right Act 1957 by virtue of Section 62(2) of which even the court where plaintiff resides or carries on business or personally works for gain has jurisdiction to entertain the suit)

On the other hand, for carrying on business presence of the person carrying on the business may not always be necessary. Such business may be carried at a particular place through an agent or a manager or a servant and the owner may not even visit that place. However, in such situation certain conditions are applicable which have been enumerated in para 45 of the above authority of *M/s Dhodha House* extensively quoting from Mulla on C.P.C. 15th edition volume 1 pages 246 - 247.

In the first sentence of para 45 it has been mentioned that "*the expression carries on business and the expression 'personally works for gain' connotes two different meanings".*

Under Section 17, if the relief claimed in a suit is in respect of immovable property situate within jurisdiction of different courts, suit may be instituted in one of the courts. Under this section cause of action must be the same. However, under order 2 rule 3 C.P.C. several causes of action against the same defendant may be united in the same suit. Under sub-rule 2 it is provided as under:-

> *"Where causes of action are united the jurisdiction of the court as regards the suit shall depend on the amount or value of the aggregate subject matter at the date of instituting the suit."*

However, under this rule different causes of action in respect of immovable properties situate within the jurisdiction of different courts cannot be united as held in Para 53 of the above authority of *M/s Dhodha House* which is quoted below:-

*"53. For the purpose of invoking the jurisdiction of a court only because 2 causes of action joined in terms of the provisions of C.P.C. the same would not mean that thereby the jurisdiction can be conferred upon a court which had jurisdiction to try only the suit in respect of one cause of action and not the other. Recourse to the additional forum however in a given case may be take if both the causes of action arise within the jurisdiction of the court which otherwise had the necessary jurisdiction to decide all the issues."*

Section 21:

By virtue of section 21 no objection as to pecuniary and territorial jurisdiction shall be allowed by any appellate or revisional court unless such objection was taken in the court of first instance before settlement of issues and unless there has been a consequent failure of justice. (In case of suit tried by the Small Causes Court which is not required to frame issues, objection shall be taken at the earliest possible opportunity).

Section 21 imposes three conditions; one is that objection to jurisdiction shall be taken before the trial court, second is that it must be taken at or before settlement of issues and the third is that there should have been consequent failure of justice. The third condition comes into picture only if suit has been decided on merit. If objection is decided as preliminary issue then the question of failure of justice is immaterial vide para 7 of *Bahrain Petroleum v. P.J. Pappu, AIR 1966 SC 634*. However, in case suit is decided on merit then even if the first two conditions are satisfied, still if third condition is not satisfied, appellate or revisional court cannot set aside the decree vide ( *Koopilan Uneen's daughter) Pathumma v. (Koopilan Uneen's son) Kuntalan Kutty, AIR 1981 SC 1683* (3 judges)(arising out of suit for partition of immovable property)*;* para 3 is quoted in Appendix B.

Similar view has been taken in *R.S.D. Finance Co. v. Shree Vallabh Glass Marks, AIR 1993 SC 2094 (3 judges) (arising out of suit for recovery of loan).* Para 8 is quoted below:-

> "**8.** *In the present case though the first two conditions are satisfied but the third condition of failure of justice is not fulfilled. As already mentioned above there was no dispute regarding the merits of the claim. The defendant has admitted the deposit of Rupees 1,00,000/- by the plaintiff, as well as the issuing of the five cheques. We are thus clearly of the view that there is no failure of justice to the defendant decreeing the suit by the Learned single Judge of the Bombay High Court, on the contrary it would be totally unjust and failure of justice to the plaintiff in case such object relating to jurisdiction is to be maintained as allowed by the Division Bench of the High Court in its appellate jurisdiction."*

It has also been held in para 7 that if the court holds that it has got no jurisdiction then instead of dismissing the suit on that count, plaint should be returned for filing before appropriate court. (As per O. 7 R. 10).

This principle (necessity to show failure of justice) has been applied to other proceedings also e.g. proceedings before Industrial Tribunal (*Barkash Bhushan Ghosh v. Novartis India Ltd., 2007 (5) SCC 591*) claim petition before Motor Accident Claims Tribunal (*Mantoo Sarkar v. Oriental Insurance Co., AIR 2009 SC 1022*). Same thing has been provided under section 66 of U.P. Value Added Tax Act 2008.

Exactly similar conditions have been laid down in Section 331 of U.P. Z.A.L.R. Act.

After final decision of suit on merit it is very difficult to prove failure of justice.

In *Hira Lal v. Kali Nath AIR 1962 SC 199* plea regarding territorial jurisdiction was not permitted to be raised subsequently. However, in *Bahrein Petroleum v. P.J.Pappu AIR 1966 SC 634* the plea of bar of territorial jurisdiction had been raised at the earliest opportunity and the trial court decided the said issue as preliminary issue holding that it had no jurisdiction. The High Court held that defendant had waived the objection. The Supreme Court did not agree and held that as it had been raised at the earliest possible opportunity and decided as preliminary issue, hence, it had not been waived. However the principal that objection to territorial jurisdiction could be waived was accepted. It was further held in the last sentence of para 3 that "*Independently of this section* (section 21) *the defendant may waive the objection and may be subsequently precluded from taking it see Hira Lal",* supra. Accordingly if before framing of issues suit is decreed on the basis of compromise, the decree cannot be questioned or challenged on the ground of lack of pecuniary or territorial jurisdiction. Even though section 21 will not come into picture as issues had not even been framed, however on the general principle of waiver, defendant will not be permitted to raise the objection.

A somewhat contrary view has been taken in *Harshad Chiman Lal Modi v. DLF Universal Ltd. AIR 2005 SC 4446,* (2 judges)holding that if the suit is in respect of immovable property (specific performance and possession) then by virtue of Section 16 it can be instituted only and only before the court within whose jurisdiction the property is situated and if suit is instituted in any other court, the said court would not be having any jurisdiction over the subject matter, hence, such error would not be error pertaining to territorial jurisdiction. In the said case immovable property in dispute was situated in Gurgaon (Haryana). The agreement was made in Delhi, the defendant (DLF) had its head office at Delhi.

Payment was to be made in Delhi in instalments and first instalment had been paid at Delhi. The parties had agreed that the Delhi Court alone would have jurisdiction in all matters arising out of the transaction. In the written statement jurisdiction was admitted. Issues were framed and as jurisdiction had been admitted, hence, no issue pertaining to jurisdiction (territorial) was framed. After more than eight years of filing of the written statement and after more than six months of framing of issues application for amendment of the written statement was filed questioning the jurisdiction of the court on the ground that it was barred by Section 16 C.P.C. The paragraph in the original written statement admitting the jurisdiction of Delhi Court was not got deleted through amendment. Still the Supreme Court held that objection regarding jurisdiction could be raised and orders of the trial court and the High Court holding the suit to be not maintainable at Delhi Court were approved and it was held that Section 21 C.P.C. was not applicable. Para 28 of the said judgment is quoted below:-

> *"28. We are unable to uphold the contention. 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 jurisdictions 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 the 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 nullity."*

With respect it is submitted that for the purpose of Section 21 there is no distinction between section 16 and Section 20. Whether the objection to jurisdiction is under section 16 (suit to be instituted where immovable property situate) or Section 20 (suit to be instituted where cause of action arises or defendant resides,) both are covered by Section 21. None of the sections warrant limiting the applicability of Section 21 to the objection under Section 20 only. Lacking jurisdiction over subject matter means not having jurisdiction to decide the claim and not the property in dispute in the suit (See previous synopsis). In *Pathumma v. K. Kutty AIR 1981 SC 1683,* supra, a larger Bench of three Judges, section 21 has been applied on suit regarding immovable property.

Similarly it is stated respectfully that paras 24 and 26 of *Dhodha House AIR 2006 SC 730* (supra) do not state the law correctly. Para 24 to 26 are quoted below:

*"24.It is trite law that a judgment and order passed by the court having no territorial jurisdiction would be nullity.*

*25.In Kiran Singh and Others v. Chaman Paswan and Others [ AIR 1954 Supreme Court 340], this Court observed :*

> *"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, whether it is pecuniary or territorial, or*

*whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."*

*26. A judgment or order passed by a court lacking territorial jurisdiction, thus, would be coram non judice. Thus, if a district court, where the plaintiff resides but where no cause of action arose otherwise, adjudicates a matter relating to infringement of trade mark under the 1958 Act, its judgment would be a nullity."*

Firstly, in respect of final judgment and decree the view is not correct as it does not take into consideration section 21 and latter part of para 6 and para 7 of *Kiran Singh (1954).* In para 25 only earlier part of para 6 of *Kiran Singh* has been quoted. Both the paras of *Kiran Singh* are quoted in Appendix B. Secondly the observation is obiter as the case arose out of <u>temporary injunction</u> matter and issues had not even been framed.

Earlier, Section 21 C.P.C. did not specifically refer to pecuniary jurisdiction. Through C.P.C. (Amendment) Act of 1976 w.e.f. 1.2.1977 Sub-sections (2) and (3) were added. By virtue of Sub section (2) same restriction has been placed upon the objection to pecuniary jurisdiction as upon territorial jurisdiction. However, even prior to the said amendment the position was same. In *Kiran Singh, AIR 1954 SC 340* after making reference to Section 11 of Suits Valuation Act (quoted in Appendix A) it was held in para 7 (quoted in Appendix B) that such objection was also barred to be raised in appeal if it had not been raised in the suit at the earliest opportunity.

<u>Section 21-A</u> (Inserted in 1976-77)

The words 'place of suing' used in section 21-A include pecuniary jurisdiction also, vide *Subhas Mahadevasa Habib v. Nemasa Ambasa Dharmadas, AIR 2007 SC 1828,* para 25 first sentence of which is quoted blow:-

> ***"25.*** *Though Section 21A of the Code speaks of a suit not being maintainable for challenging the validity of a prior decree between the same parties on a ground based on an objection as to "the place of suing", there is no reason to restrict its operation only to an objection based on territorial jurisdiction and excluding from its purview a defect based on pecuniary jurisdiction."*
>
> Entire para quoted in Appendix B.

Ouster of jurisdiction by consent:

Section 28 of the Contract Act (quoted in Appendix A) provides that agreements in restraint of legal proceedings are void. Section 23 inter alia provides that agreement of which the object or consideration is opposed to public policy is void.

However, if two or more courts have got territorial jurisdiction to entertain a suit then ouster of jurisdiction of one of the two courts or some of the several courts is permissible by agreement. What is prohibited is total exclusion. If a suit may be instituted at place A and B then parties may agree that it would be instituted only either at place A or place B. Such agreement would be perfectly legal, and not against public policy under Section 23 of Contract Act.

The first leading authority of the Supreme Court on the point is reported in *Hakam Singh v. Gamon (India) Ltd., AIR 1971 SC 740,* wherein it was held as follows:-

> *"It is not open to the parties by agreement 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 C.P.C. jurisdiction to try a suit or proceeding on agreement between the parties that the dispute between them shall be tried in one of such courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act."*

In *Harshad C.L. Modi v. D.L.F. Universal Ltd., AIR 2005 SC 4446* (supra) the above quoted portion of *Hakam Singh* was quoted in para 22 and thereafter in para 23 various cases of the Supreme Court where *Hakam Singh* had been followed were enumerated. Para 23 is quoted below:-

*"Hakam Singh was followed and principle laid down therein reiterated in several cases thereafter. (See Globe Transport Corporation v. Triveni Engineering Works & Anr., (1983)4 SCC 707, A.B.C. Laminart (P) Ltd. & Anr. v. A.P. Agency, Salem, (1989)2 SCR 1: AIR 1989 SC 1239, Patel Roadways Ltd., Bombay v. Prasad Trading Co., 1992(3) SCT 270 (SC) : (1991)4 SCC 270 : AIR 1992 SC 1514, R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd., 1993(3) RRR 425 (SC) : (1993)2 SCC 130 : AIR 1993 SC 2094, Angile Insulations v. Devy Ashmore India Ltd. & Anr., (1995)4 SCC 153, Shriram City Union Finance Corporation Ltd. v. Rama Mishra, (2002)9 SCC 613: AIR 2002 SC 2402, New Moga Transport Co. v. United India Insurance Co. Ltd. & Others, 2004(3) RCR(Civil) 141 (SC) : (2004)4 SCC 677: AIR 2004 SC 2154."*
(Equivalent citations of AIR supplied)

In the said case (*Harshad C.L. Modi)* the facts were that suit for specific performance of an agreement for sale in respect of an immovable property situate in Gurgaon (Haryana) was instituted at Delhi and in the agreement also it was mentioned that suit could be filed only at Delhi. The Supreme Court held that in view of Section 16 C.P.C. as the property was situated at Gurgaon, hence, only Gurgaon court had jurisdiction and Delhi Court had absolutely no jurisdiction to entertain the suit. It was further held that the agreement that suit should be filed at Delhi was void as under an agreement jurisdiction cannot be conferred upon a court which otherwise has got no jurisdiction.

Sometimes it is mentioned in the agreement that any dispute should be subject to the jurisdiction of one of the courts where suit may be instituted and the clause is qualified by the words like 'only', 'alone' or 'exclusively'. However, even if such words are not used still if the

intention may be gathered from the agreement and its working then the jurisdiction of other courts would be barred.

In *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, AIR 1989 SC 1239* it was held as follows:

*"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 case the maxim expressio, unius, est, exclusio, alterius – expression* of one *is the exclusion of the other – may be applied. What is an appropriate case shall depend on the facts of the case."*

Following the above authority it was held in *M/s Hanil Era Textiles Ltd. v. M/s Puromatic Filters (P) Ltd., AIR 2004 SC 2432* that absence of words like only, alone or exclusively in the agreement was immaterial. In the said case part of cause of action accrued in Delhi and part in Bombay, the agreement provided that dispute should be subject to the jurisdiction of the courts at Bombay; purchase order was placed by the defendant at Bombay and it was accepted at Bombay by the branch office of the plaintiff; advance payment was made by the defendant at Bombay and according to the plaintiff final payment was to be made at Bombay. In view of these facts the Supreme Court held that the intention of the parties was that courts only at Bombay had the jurisdiction to entertain the suit.

In *R.S.D.V. Finance Co. Pvt. Ltd. v. Shree Vallabh Glass Makers Ltd., AIR 1993 SC 2094* it was held that even though Court at Bombay as well as Anand (Gujarat) had jurisdiction but in view of the facts that disputed amount was paid by cheque on a bank at Bombay and the cheque was also deposited in a bank at Bombay, suit for recovery of the amount instituted at Bombay was maintainable notwithstanding the endorsement

on deposit receipt issued by the debtor to the effect 'subject to jurisdiction of Anand court'. Placing reliance upon *A.B.C. Laminart (1989)* supra, it was held that firstly the endorsement was only by the debtor and secondly it was not qualified by the words 'only', 'exclusively' etc., hence, under the facts and circumstances of the case it did not amount to ouster of jurisdiction of the Court at Bombay.

## 5. When to be decided as Preliminary Point / Issue?

By virtue of order 14 rule 2 (2)C.P.C. as amended in 1976 -77 (quoted below) if a suit may be disposed of only on an issue of law relating to jurisdiction of the Court or a bar to the suit created by any law then the said issue may be tried first. Prior to its amendment the provision was mandatory and of wider sweep vide *Foreshare Co-operative Housing Society Ltd. v. Praveen D. Desai, AIR 2015 SC 2006* (paras 31 to 34). In this authority it has also been held that the position under Section 9A as added by Maharashtra Legislature is different and there under it is mandatory that if question of jurisdiction (e.g. bar of limitation) is raised by the defendant it shall be decided as preliminary issue even before decision on the temporary injunction application.

**Order 14 Rule 2: *Court to pronounce judgment on all issues***: *(1) Notwithstanding that case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.*

*(2) where issues both of law and of fact arise in the same suit, and the Court is o 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,*

*and for the purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and*

*may deal with the suit in accordance with the decision on that issue.*

Under O. 7 R. 11 (d) the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Such plea is called plea of demurrer vide para 13 of *Ramesh B. Desai v. Bipin Vadilal Mehta AIR 2006 SC 3672.* However in this regard only and only plaint allegations are to be considered and neither any averment either in the written statement or in any application made by the defendant nor any evidence adduced by the defendant is to be seen. In para 8 of *Bhau Ram v. Janak Singh, AIR 2012 SC 3023* after placing reliance upon its seven earlier authorities the Supreme Court held as follows:-

"*The law has been settled by this court in various decisions that while considering an application under order VII Rule 11 C.P.C. the court has to examine the averments in the plaint and the pleas taken by the defendant in its written statement would be irrelevant.* (vide……)"

In this regard reference may also be made to *Kamala v. K.T.Eshwara Sa AIR 2008 SC 3174* and *Sopam S. Sable v. Asst. Charity Comm. 2004 (3) SCC 137* (not noticed in *Bhau Ram,* supra) and the authorities discussed therein.

In respect of resjudicata it has been held in *Vaish Aggarwal Panchayat v. Inder Kumar AIR 2015 SC 3357* (after placing reliance mainly on *Kamla,* supra, but not noticing *Bhau Ram,* supra) that this question is mixed question of law and fact, requiring consideration of earlier judgment and pleading, hence on this ground plaint cannot be rejected under Order 7 Rule 11(d).

Regarding bar of limitation it has been held that '*unless it becomes apparent from the reading of the company petition that the same is barred by limitation the petition cannot be rejected under order 7 rule 11(d) C.P.C.'* (para 16 of *Ramesh B. Desai*, supra.). Same view has been taken in *P.V. Guru Raj Reddy v. P. Neeradha Reddy AIR 2015 SC 2485*. In *Fatehji & Company v. L.M. Nagpal AIR 2015 SC 2301* it was held that by reading the plaint alone and taking all the allegations made therein to be correct, suit for specific performance of agreement for sale was barred by limitation. Reversing the judgment of the High Court it was held that the trial court rightly rejected the plaint under order 7 rule 11 (d) C.P.C.

Plaint may be rejected under Order 7 Rule 11 (d) at any stage of the suit, even after settlement of issues vide *Samar Singh v. Kedar Nath SAIR 1987 SC 1926,* referred to in para 19 of *Vithalbhai Pvt. Ltd. v. Union of India AIR 2005 SC 1891* quoted below:-

> *"In Samar Singh v. Kedar Nath, AIR 1987 SC 1929: 1987 Supp. SCC 663 this Court while dealing with an election petition has held that the power to summarily reject conferred by Order 7 Rule 11 of the Code of Civil Procedure can be exercised at the threshold of the proceedings and is also available, in the absence of any restriction statutorily placed, to be exercised at any stage of subsequent proceedings. However, the Court has also emphasized the need of raising a preliminary objection as to maintainability as early as possible though the power of the court to consider the same at a subsequent stage is not taken away."*

Accordingly, in spite of O. 14 R. 2 not being mandatory, by virtue of O. 7 R.11(d) question of jurisdiction has to be decided as preliminary

point/ issue, if it does not require any evidence and inquiry into facts. However, under O. 14 R. 2 such issue may be decided as preliminary issue even after taking and considering the evidence relevant to the said issue. But this exercise is discretionary (except in Maharashtra) while O. 7 R. 11 is mandatory.

Under order 14 rule 2(2) no factual controversy can be decided. Even when this rule was mandatory before 1976-77 amendment it was held by the Supreme Court in *Major S.S. Khanna v. Brig. F.J. Dillon, AIR 1964 SC 497* (para 18) that "*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 depends upon the decision of issues of fact would result in lop-sided trial of the suit".* (quoted in para 12 of *Ramesh B. Desai,* supra.) Even though decision on issue of fact is barred but consideration of evidence is not barred under order 14 rule 2(2) otherwise it will become redundant as the entire filed would be covered by order 7 rule 11(d). The distinction is that such evidence which is not denied or in normal course cannot be denied can be taken into consideration under order 14 rule 2(2) while deciding issue of law as preliminary issue. Suppose in a plaint nothing is stated regarding earlier litigation between the same parties and on the same cause of action. The defendant asserts that the suit is barred by res-judicata or order 9 rule 9 and files certified copies of pleadings and judgments of the earlier suit. The plaint cannot be rejected under order 7 rule 11(d) as it does not disclose the bar. However the issue of bar framed on the plea of the defendant may be decided as preliminary issue under order 14 rule 2(2) after taking into consideration the evidence adduced by the defendant in the form of certified copies unless plaintiff disputes correctness of the same. Similarly at the stage of order 14 rule 2(2) evidence of parties or their representatives under order 10 rule 2 may also

be taken into consideration. In fact such statement may be taken into consideration even at the stage of order 7 rule 11(a), infra.

Under order 7 rule 11(a) "the plaint shall be rejected where it does not disclose a cause of action." There is lot of difference between not having a cause of action, which may be decided after evidence, and not disclosing cause of action which is to be decided by reading only the plaint.

Under order 6 rule 16 it is provided as under:-

> *"16.* Striking out pleadings.-*The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-*
>
> *(a) which may be unnecessary, scandalous, frivolous or vexatious, or*
>
> *(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or*
>
> *(c) which is otherwise an abuse of the process of the Court."*

If after striking out part of pleading, whatever remains does not disclose cause of action, plaint is to be rejected under Order 7 Rule 11. (a) Sometimes combined application under both the provisions is filed by the defendant particularly in election petitions under Representation of People Act.

In *T. Arivandandam v. T.V. Satyapal, AIR 1977 SC 2421,* combined use of these provisions was emphasized in para 5 in the following manner:

***"5.*** *We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:*

*"It is dangerous to be too good."*

If the court holds that it has got no jurisdiction and some other court has the jurisdiction to try the suit, then instead of dismissing the suit, plaint must be returned for presentation before appropriate court in view of O. 7 R. 10, vide *R.S.D.V.Finance Co. v. S.V. Glass Makers AIR 1993 SC 2094.*

<u>Premature suit:</u>

If the suit at the time of its institution is not mature but by the time written statement is filed and the question of maturity is taken up by the court, suit becomes mature, it cannot be dismissed under Order 7 Rule 11 (a) except in exceptional cases vide *Vithalbhai, AIR 2005 SC 1891,* supra (Suit for eviction of tenant had been filed before expiry of lease). Same principle has been applied to execution in *Pushpa Sahkari Avas Samiti v. Gangotri Sahkari Avas Samiti, 2012 (4) SCC 751*

## 6. J.S.C.C. or Civil Judge, Cognizance of suit

Section 16 of Provincial Small Causes Court Act (PSCC Act), is as follows:

> "16. Exclusive jurisdiction of Courts of Small Causes.— *Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable."*

Section 15 of PSCC Act as amended by U.P. Legislature provides as under:-

> *"*15. Cognizance of suits by Courts of Small Causes.— *(1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.*
>
> *(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five thousand rupees shall be cognizable by a Court or Small Causes:*
>
> *Provided that in relation to suits by the lessor for the eviction of a lessee from a building after the determination of his lease or for recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease or of compensation for use and occupation thereof after the*

*determination of the lease, the reference in this sub-section to five thousand rupees shall be construed as a reference to twenty five thousand rupees.*

*Explanation.- For the purposes of this sub-section, the expression "building" has the same meaning as in Art. (4) in the Second Schedule."*

Schedule II contains 35 articles. Accordingly very few suits (e.g. for recovery of small amount of money lent) are cognizable by Judge Small Causes Court (JSCC) under unamended Section 15. However, by virtue of U.P. amendment suits in respect of buildings by landlords against tenants which are quite large in number, are cognizable by JSCCs. In fact, in every district of U.P. large number of cases are instituted and pending before JSCC, more than 90% of which consist of suits by landlords against tenants. (Suit against tenant in respect of only open land is not cognizable by JSCC. ) If the valuation of the suit by landlord against tenant of a building is more than Rs. 25,000/- then it is cognizable by D.J./ A.D.J. as JSCC by virtue of section 25(2) of Bengal Agra Assam Civil Court Act as amended by U.P, the entire section 25 is quoted below:-

**"***25. (l) The High Court may by notification in the official Gazatte, confer within such local limits as it thinks fit, upon any Civil Judge or Munsif, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 for the trial of suits cognizable by such Courts up to such value not exceeding five thousand rupees as it thinks fit, and may withdraw any jurisdiction so conferred:*

*Provided that in relation to suits of the nature referred to in the*

*proviso to sub-section (2) of Section 15 of the said Act, the reference in this sub-section to five thousand rupees shall be construed as reference to twenty five thousand rupees.*

*(2) The High Court may, by notification in the official Gazette, confer upon any District Judge or Additional District Judge the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act. 1887, for the trial of all suits (irrespective of their value), by the lessor for the eviction of a lessee from a building after the determination of his lease, or for the recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease or of compensation for the use and occupation thereof after such determination of lease, and may withdraw any jurisdiction so conferred.*

*Explanation. - For the purposes of this sub-section, the expression 'building' has the same meaning as in Article (4) in the Second Schedule to the said Act)"*

The Allahabad High Court through notification dated 25.10.1972 has conferred the jurisdiction of JSCC on all D.Js. and A.D.Js. to try landlord tenant suits, in respect of buildings, irrespective of valuation (quoted in para 8 of *M.P. Mishra v. Sangam Lal, AIR 1975 All. 425*) By virtue of Section 15 C.P.C. suit is to be instituted before the court of lowest grade competent to try it. Accordingly such suits of the valuation of Rs. 25,000/- or less are to be instituted before JSCC otherwise before D.J. to be tried either by himself or to be transferred to some A.D.J.

A suit pending before JSCC may be transferred to a regular civil court which will try it as JSCC even though otherwise it may not have the jurisdiction as JSCC. The relevant provision is Section 24(4) C.P.C. which is quoted below:-

"*24(4). The court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.*"

This provision is exception to general rule that no court can hear a suit if it is not competent to try it.

However, if a suit is transferred from regular civil court to JSCC, still it is to be tried as regular suit and not SCC suit, for the reason that every JSCC is also regular Civil Court (and not vice versa).

In spite of preemptive language of Section 16 PSCC Act it has been held by Full Benches of Allahabad and M.P. High Courts that the jurisdiction of JSCC is preferential and not exclusive. If a suit cognizable by JSCC is tried and decided by regular Civil Court (Civil Judge, Senior Division or Junior Division) the decree is not nullity. *Manzurul Haq v. Hakim Mohsin Ali AIR 1970 All 604 and AIR 1970 M.P. 237.* Para 22 of the Allahabad Full Bench is quoted below:-

> *"22. The marginal heading of Section 16 of the Provincial Small Cause Courts Act shows that the court of small causes exercises exclusive jurisdiction. The meaning of the word 'exclusive' in that heading is ambiguous. From a reading of Section 16 of the said Act it is clear that the court of small causes is merely a court of preferential and not of exclusive jurisdiction."*

Under Section 23 PSCC Act if complicated question of title is involved then the plaint shall be returned for filing before regular Civil Court. In *Budhu Mal v. Mahabir Prasad AIR 1988 SC 1772* it was held that under the facts and circumstances of the case plaint should have been returned by the JSCC.

However JSCC can decide the title incidently but such decision would be subject to regular civil suit wherein it would not operate as resjudicata vide *Shamim Akhtar v. Iqbal Ahmad AIR 2001 SC 1* and *Ramji Gupta v. Gopi Krishan Agarwal AIR 2013 SC 3099.*

## 7. Bar created by C.P.C. itself

Section 9 C.P.C. itself limits the jurisdiction of the Courts by making it subject to its provisions, as per its portion within brackets i.e. (subject to the provisions herein contained). Following provisions of C.P.C. bar the suits.

Under Section 11 C.P.C. it is provided as under:

> *"S. 11.* ***Res judicata:*** *No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."*
>
> *Explanations I to VIII:…….*

Section 12 C.P.C. provides as under:-

> ***"S.12. Bar to further suit.-*** *Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies."*

Under Section 21-A, inserted in 1976-77 quoted in Appendix A it is provided that a decree cannot be challenged through another suit on the ground that the court which passed the disputed decree had no territorial (including pecuniary) jurisdiction. (See also synopsis 4)

Under Section 47 (1) it is provided as under:-

*"**Section 47(1)** All questions arising between the parties to the suit in which the decree was passed or their representative and relating to the execution discharge or satisfaction of the decree shall be determined by the Court executing the decree and **not by a separate suit.**"*

Restitution on reversal of decree may be obtained only from the court which passed the decree as provided under Section 144(1) C.P.C. Suit for restitution is barred under Sub Section 2 thereof which is quoted below:

*"144 (2) No suit shall be instituted for the purposes of obtaining any restitution or other relief which could be obtained by applicant under sub-section (1)"*

Order 2, Rule 2, C.P.C. provides that if part of the claim or some relief flowing from the cause of action is not claimed in the suit, it cannot be claimed through another suit. Order 2, Rule 2 to 4 are quoted in Appendix A.

Order 9, Rule 8 makes it obligatory upon the court to dismiss the suit if defendant appears and plaintiff does not appear. Thereafter it is provided under Order 9 Rule 9 (1) (first sentence) as follows:-

*"Where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action.*

In case of resistance to execution of decree for possession of immovable property or dispossession of wrong person therein applications are to be filed under **Order 21 Rule 97 and 99** which are to be decided under Rule 98 or 100. Such orders before 1976-77 amendment in C.P.C.

(Act No. 104 of 1976 w.e.f. 1.2.1977) were subject to the result of the suit. However, through amendment of 1976-77 it was provided under Rule 101 that:

> *"All questions arising between the parties on an application under Rule 97 or Rule 99 shall be determined by the Court dealing with the application and* ***not by a separate suit.*** *Under Rule 103 such adjudication is given the status of decree subject to appeal."*

Under Rule 104 it is provided that if any suit was pending on commencement of the proceedings under Rule 101 or Rule 103 then orders passed under the said rules shall be subject to the result of the suit.

**Order 23 Rule 1(4)** quoted below bars fresh suit in case of abandonment of earlier suit or its withdrawal without permission to institute fresh suit.-

"*Rule 1(4). Where the plaintiff-*

> *(a) abandons any suit or part of claim under sub-rule (1), or*
> *(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3)*

*he shall be liable for such costs as the Court may award and* ***shall be precluded from instituting any fresh suit*** *in respect of such subject – matter or such part of the claim.*

Under Order 23 Rule 3-A C.P.C. it is provided as follows:-

"***No suit shall lie*** *to set aside a decree on the ground that the compromise on which the decree is based was not lawful."*

## 8. Bar Created by Specific Relief Act

Under Section 14 (1) infra those contracts have been provided which are not specifically enforceable:-

*"14. Contracts not specifically enforceable.—*

*(1) The following contracts cannot be specifically enforced, namely:—*

*a) A contract for the non-performance of which compensation in money is an adequate relief;*
*b) A contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;*
*c) A contract which is in its nature determinable;*
*d) A contract the performance of which involves the performance of a continuous duty which the court cannot supervise."*

(Entire section has been quoted in Appendix A.)

So for as clause (a) is concerned, it has been provided under Section 10 that unless contrary is proved the Court shall presume that the breach of the contract to transfer immovable property cannot be adequately relieved by compensation in money.

Under Section 14(3) it is provided that notwithstanding anything contained in Clause (a) or Clause (C) or Clause (d) of sub-section 1 the court may enforce specific performance in three cases mentioned there under including a suit for the enforcement of contract for the construction of any building or the execution of any other work on land provided that certain enumerated conditions are fulfilled (c).

It has been held in *Union of India v. Millenium Mumbai Broad Cost Ltd., AIR 2006 SC 2751* that the Act does not apply to statutory contracts. Para 33 is quoted below:-

*"**33**. So far as the contention of the learned Additional Solicitor General that the direction issued by the Tribunal, as*

*quoted supra, is contrary to Section 14(1)(c) of the Specific Relief Act, 1963, is concerned, the same is stated to be rejected. The provisions of the Specific Relief Act would not apply to the contracts, which are governed by the statutory provisions."*

In *Shanti Prasad Devi v. Shanker Mehta AIR 2005 SC 2905* (para 19) it was held that vague agreement cannot be specifically enforced. In the said case agreement for lease contained clause of renewal on such terms which might be decided by Mukhia and Panches. It was held that as Mukhia and Panches were not named hence renewal clause could not be enforced through suit for specific performance.

In *Her Highness Maharani Shantidevi P. Gaikwad v. Savjibhai Haribhai Patel, AIR 2001 SC 1462* an agreement had been entered into for construction of thousands of dwelling units for weaker section as per the scheme to be prepared under Section 21 of Urban Land Ceiling Act 1976 (repealed in 1999). *The* Supreme Court held that the contract could not be specifically enforced for various reasons including the reason that the implementation of the scheme would require continuous supervision by the Court which was not practicable as per section 14(1)(d), supra (paras 59 to 61).

In *Indian Oil Corporation v. Amritsar Gas Service 1991(1) SCC 533* it has been held that as the contract was terminable hence even if it was wrongly terminated, in view of Section 14 (1)(c) supra contract could not be specifically enforced / kept alive and the only remedy of aggrieved party was to claim damages.

Under Section 24 it is provided as under:-

*" The dismissal of a suit for specific performance of contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach*

*of such contract or part as the case may be but shall not bar his right to sue for any other relief to which he may be entitled by reason of such breach."*

Under Section 40 (3) it is provided as under:-

*"The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach."*

By virtue of Section 41 (quoted in the appendix) certain suits for injunction are barred which include a suit to restrain any person from instituting or prosecuting any proceedings in a court not subordinate to that from which the injunction is sought (b), to prevent the breach of a contract the performance of which would not be specifically enforced(e), when equally efficacious relief can certainly be obtained by any other usual mode of proceedings except in case of breach of trust (h) and when the conduct of the plaintiff disentitles him to the assistance of the Court (i). In *Cotton Corp. of India v. United Industrial Bank AIR 1983 SC 1272,* interpreting clause (b), it was held that neither perpetual nor interim injunction could be granted in a suit by the High Court (Bombay) to restrain the defendant appellant from initiating winding up proceedings under Companies Act before the High Court. Suit for restraining a municipal body from realizing House Tax will be barred by clause (h) as under the Relevant Acts remedy of objection and appeal is provided vide *Municipal Corp. of Delhi v. S.C. Jaipuria AIR 1976 SC 2621.*

In *Sangram Singh v. State of U.P. AIR 2010 All 65* it has been held that in view of section 14(1)(d), supra, no injunction can be issued restraining any person or authority from lodging F.I.R.

Under section 34, proviso, infra suit for declaration alone when further relief which may be claimed is not claimed, is not maintainable:-

> "*Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.*"

(See also synopsis 1 and 11.)

## 9. Benami Transactions (Prohibition) Act 1988

Section 4 of Benami Transactions (Prohibition) Act 1988**,** quoted below, bars the suit to enforce any right in respect of benami property:-

*"Section 4. Prohibition of the right to recover property held benami-*

*(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.*

*(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.*

*(3) Nothing in this section shall apply,--*

*(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or*

*(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity."*

The section is prospective and does not affect suit or other proceedings pending on the date of its enforcement (19.5.1988) vide *R. Rajagopal Reddy v. Padmini Chandrasekharan AIR 1996 SC 238* (overruling *Mithilesh Kumari v. Prem Behari Khare* AIR 1989 SC 1247), *C. Ganga Charan v. C. Narayanan AIR 2000 SC 589, Probodh Chandra Ghosh v. Urmila Dassi AIR 2000 SC 2534.* (*Om Prakash v. Jai Prakash AIR 1992 SC 885* and *Duvuru Jaya Mohana Reddy v. Alluru Nagi Reddy* following *Mithelesh Kumari* stand impliedly overruled)

However, the Act does not prohibit such suit, defence or plea if property is purchased by a person in favour of his wife or unmarried daughter vide *Nand Kishore Mehra v. Sushila Mehra AIR 1995 SC 2145* and *Rebti Devi v. Ram Dutt AIR 1998 SC 310.*

In *C. Gangacharan v. C. Narayanan, AIR 2000 SC 589, supra,* it has also been held that suit for possession on the plea that plaintiff sent money to defendant from abroad to purchase property in plaintiff's name but defendant purchased in his own name is not barred by the Act as the suit is against trustee. Similarly in *P.V.G. Raj Reddy v. P.N. Reddy, AIR 2015 SC 2485* it has been held that suit for declaration, cancellation of sale deed and for possession on the plea that plaintiffs sent money to defendants from abroad for purchasing property in plaintiff's name but defendants purchased one property in the name of their close relation and the other jointly in the names of plaintiff's son and son of defendants 1 and 2 is not barred by the Act.

## 10. Public Money Recovery:

Recovery of Debts Due to Banks and Financial Institutions Act (RDDB Act) 1993, by virtue of its Section 18 prohibits the Civil Court to exercise any jurisdiction in relation to the matters specified in Section 17. Under Section 17 of the Act Tribunal is to exercise the jurisdiction to entertain and decide applications from the banks and financial institutions for recovery of debts (by virtue of Section 1(4) of the Act, the provisions of the Act do not apply where the amount of debt due to any bank etc. is less than Rs. 10 lacs). Debt has been defined under Section 2(g) which means any liability (inclusive of interest) which is claimed as due from any person by a bank or financial institution or consortium of banks or financial institutions. Under Section 31 of the Act it is provided that "every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding cause of action where on it is based is such that it would have been if it had arisen after such establishment within the jurisdiction of such tribunal shall stand transferred on that date to such Tribunal."

In *Allahabad Bank v. Canara Bank, AIR 2000 SC 1535* it has been held that the word 'proceeding' in Section 31 includes execution also. The said authority has been followed in *Punjab National Bank v. Chajju Ram AIR 2000 SC 2671* (3 judges). In the latter authority it has been held that if the principal amount is less than Rs. 10/- lacs but after adding the interest awarded by the decree the total amount becomes more than Rs. 10 lacs then execution is to be transferred to the Tribunal.

It has been held in *Bhanu Construction Company v. Andhara Bank, AIR 2001 SC 477* that under Section 18 of the Act the jurisdiction of the Civil Court stands barred from the appointed date which is the date on which Tribunal was constituted and not the date on which the Act was passed. In the said case the Tribunal was constituted/ established on 30.11.1994 and Civil Court had passed the order on 30.9.1994 which was held to be valid.

In *Indian Bank v. Mani Lal Govind J. Khona, AIR 2015 SC 1240* it was held that if High Court ( Bombay High Court) on its original side had passed a decree for recovery of money prior to 16.7.1999 when DRT for the area in question was constituted but thereafter (on 3.12.1999) directed the receiver to sell the mortgaged property in execution , the direction was completely without jurisdiction and the consequent sale was void *ab initio*. It was further held that such sale, order or action could be questioned anywhere and ignored even in collateral proceedings. For this proposition reliance was placed upon *Kiran Singh v. Chaman Paswan, AIR 1954 SC 340.* Ultimately it was held that recovery officer under DRT, DRT and DRAT could very well ignore the sale. Reliance was also placed upon aforesaid authority of *PNB (2000).*

In *Punjab National Bank v. O.C. Krishnan AIR 2001 SC 3208* interpreting Sections 17 and 20 of RDDB Act it has been held in para 6 as follows:-

> *"**6.** The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is hierarchy of appeal provided in the*

*Act, namely, filing of an appeal under Section 20 and this fast track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."*

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Under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) of 2002 jurisdiction of the Civil Court is barred under Section 34 which is quoted below:-

*"No civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under RDDB Act 1993."*

Under Section 17 of the Act it is provided that any person (including borrower) aggrieved by any of the measures referred to in Section 13(4) taken by the secured creditor may make an application to the DRT. Thereafter, under Section 18 it is provided that any person aggrieved by any order made by the DRT may also prefer an appeal to Debt Recovery Appellate Tribunal. The Supreme Court in *Mardia Chemicals Ltd. v. Union of India, AIR 2004 SC 2371* examined the scope of Section 34 and held that the jurisdiction of the Civil Court is barred even in respect of measures which have not been taken but may be taken in future. Accordingly, suit is barred even if no measure has yet been taken under SARFAESI Act 2002 and remedy of approaching DRT would be available only when action is taken. In *Jagdish Singh v. Hiralal, AIR 2014 SC 371,* following the authority of *Mardia Chemicals* it was held that suit seeking declaration of title to the mortgaged property, partition and injunction is not maintainable if the matter is covered by SARFAESI Act. In the said case auction had taken place in November, 2005. It was also confirmed but possession had not been granted to the auction purchaser when civil suit was instituted in 2007.

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Under Section 3(3) of U.P. Public Monies (Recovery of Dues) Act 1972 it has been provided that no suit shall lie in the Civil Court for recovery of any sum regarding which recovery proceedings under the said Act (as arrears of land revenue) can be initiated. Under Section 3 (5) of the said Act it is provided that whenever a certificate is sent by the authority concerned to the Collector certifying that a certain sum is due against a person which is recoverable under the said Act, the said certificate shall not be called in question in any original suit etc. and no injunction shall

be granted by any Court in respect of any action taken or intended to be taken in pursuance of any power conferred by or under the Act.

Such types of Acts are there in other States also including Haryana by the name of Haryana Public Monies (Recovery of Dues) Act 1979. Section 3(4) of the said Act bars the jurisdiction of the Civil Court to entertain or adjudicate upon any case relating to the recovery of any sum due from the defaulter in respect of financial assistance given by the Government, Govt. Company etc. A defaulter filed a suit seeking a decree for declaration that the agreement executed by him with Haryana Financial Corporation was null and void *ab initio* and liable to be set aside. The Supreme Court in *Om Agarwal v. Haryana Financial Corporation, AIR 2015 SC 1288* held that the suit was clearly barred and plaint was rightly rejected under Order 7 Rule 11 (d) C.P.C.

## 11. Service Matters:

The jurisdiction of all Courts (including Civil Court) except of Supreme Court or Labour Court/ Industrial Tribunal is barred by Section 28 of Administrative Tribunals Act 1985 in respect of Government employees' service matters as defined under section 3(q) and not excepted by section 2 of the Act. However Supreme Court in *L. Chandra Kumar v. Union of India, AIR 1997 SC 1125* (7 judges) has held that even though at the initial stage even jurisdiction of High Court under articles 226 or 227 of the Constitution (writ petition) is barred but against judgment or order passed by the Tribunal, High Court can entertain writ petition, which must be heard by Division Bench.

Similarly jurisdiction of Civil Court is barred by section 33 of Armed Forces Tribunal Act 2007 in respect of service matters of persons subject to the Army Act 1950, Navy Act 1957 or the Air Force Act 1950. In *Union of India v. S.K. Sharma AIR 2015 SC 2465* it has been held that High Court cannot entertain writ petition under article 226 or 227 of the Constitution against decision of Armed Forces Tribunal. However doubting the correctness of this view another bench of the Supreme Court has referred the matter to larger bench.

Section 6(1) of U.P. Public Service Tribunal Act 1976 provides as under:-

> "***6. Bar of Suits:-*** *(1) No suit shall lie against the state Government or any local authority or any statutory corporation or company for any relief in respect of any matter relating to employment at the instance of any person who is or has been a public servant, including a person specified in Clauses (a) to (f) of Sub- section (4) of Section 1."*

Even though jurisdiction of High Court under articles 226 and 227 of the Constitution is not barred however High Court normally does not entertain writ petitions at the first instance on the ground of availability of alternative remedy of filing the case before the Tribunal. But decision of Tribunal may very well be challenged through writ petition.

Some other Acts also bar the jurisdiction of Civil Court in respect of service matters totally or partially e.g. Acts relating to service conditions of teachers and other employees of private recognized educational institutions. Under section 16-G (4) of U.P. Intermediate Education Act 1923 it is provided as under:-

> ***"16-G.*** *(4) An order made or decision given by the competent authority under sub-section (3) shall not be questioned in any Court and the parties concerned shall be bound to execute the directions contained in the order or decision within the period that may be specified therein."*

(Sub section (3) deals with termination of service or reduction in rank or diminution in emoluments of teachers/ head masters/ principals.)

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In view of section 14(1) (b) of Specific Relief Act, 1963, (quoted in Appendix A) normally a contract of service cannot be specifically enforced. Employer cannot be directed against his volition to take back the terminated employee in service. Even a declaration that the termination is illegal cannot be granted as it will indirectly amount to specific enforcement of service contract. The only relief which may be granted in such situation is that of damages. However, in this regard there are certain exceptions which are as follows:-

i. Public servant who is dismissed in violation of article 311 of the Constitution.

ii. A workman under Industrial Disputes Act retrenched in violation of the provisions of the Act or sister laws (see next synopsis 'Labour Laws')

iii. A body whether statutory or non statutory terminates the services of its employee in violation of mandatory provisions of some statute, rules or regulations.

As far as first two exceptions are concerned there has never been any divergence of opinion and they have consistently been followed. However, the third exception has created lot of difficulty and controversy in its interpretation and application i.e. what is statutory authority, whether Regulations are law hence enforceable or not, whether the exception can be invoked in writ jurisdiction alone or also to the suits also and whether non-statutory body can be directed to take back in service its terminated employee if the termination is against the provision of some Act, Rule etc.?

The controversy may be resolved and the confusion may be cleared by ascertaining the reasons for carving out the exceptions. This exercise does not appear to have been done in any of the Supreme Court judgments on the point which are innumerable. The plain reason for the exceptions is that if the termination is in violation of the provision of the Constitution, Act of Parliament or State Legislature or Rules or Regulations framed there under then setting aside of the termination and directing reinstatement will amount to specific enforcement of the law and not of the contract of service. Specific enforcement of law is not prohibited, fairly it is the duty of the Court. The other reason is that Specific Relief Act is general law and article 311 of the Constitution and

the other provisions of law (Act, Rules or Regulations) restricting the power of termination of service by providing grounds and manner of termination are special laws and special law is to prevail over general law.

The third reason is that security of tenure is essential for good performance and it can be achieved only if power to direct reinstatement in case of illegal termination is available to court/ authority.

The first leading authority of Supreme Court categorically laying down the three exceptions (the third exception confined to statutory bodies) is reported in *S.R. Tewari v. District Board Agra AIR 1964 SC 1680.* Prior to this authority it had been said in a general way in *S.Dutt v. University of Delhi AIR 1958 SC 1050* that unless termination was in violation of some mandatory provision, specific performance of contract of service could not be directed. This authority has been discussed in *S.R. Tewari* and it has been held that in *S.Dutt's* authority no infringement of any statutory provision was involved. Before tracing further, gradual development of law regarding statutory body its implication and the third exception relevant paragraphs of two comparatively recent authorities of the Supreme Court dealing with the exceptions are quoted below. (Both the cases arose out of suits.)

Para 11 of *State Bank of India v. S.N. Goyal*, AIR 2008 SC 2594:-

> *"11. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of*

*employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:*

*(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);*

*(ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and*

*(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.*

*There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief - damages or reinstatement with consequential reliefs - is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. (Vide : (1) Dr. S. Dutt v. University of Delhi, AIR 1958 SC 1050*; (2) *Executive Committee of UP State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi, 1970(2) SCR 250 : AIR 1970 SC 1244*; (3) *Sirsi Municipality v. Cecelia Kom Francies Tellis, 1973(3) SCR 348: AIR 1973 SC 855*;

(4)*Executive Committee of Vaish Degree College v. Lakshmi Narain, 1976(2) SCR 1006:AIR 1976 SC 888*; (5) *Smt. J. Tiwari v. Smt. Jawala Devi Vidya Mandir, AIR 1981 SC 122*; and (6)*Dipak Kumar Biswas v. Director of Public Instruction, AIR 1987 SC 1422*)."(equivalent citations, numbers to the rulings and underlining supplied)

In the earlier part of the paragraph while mentioning the third principle only statutory body has been mentioned, however, in the underlined portion non-statutory body has also been mentioned. It is submitted that the underlined portion is correct statement of law.

In the first 3 rulings mentioned in the above quoted para the authorities (university, warehousing corporation and Municipality) were created by or under Acts hence they were un-disputably statutory bodies. In the last three authorities, suits against societies running affiliated, recognized educational institutions were held to be not maintainable even through termination of teacher/ employee was found to be in violation of some Act, statutory rules some and regulations.

First sentence of para 36, Para 38 and 42 of *Rajathan SRTC v. Bal Mukund Bairwa, (2) (2009) 4 SCC 299* are quoted below:

*"36. If an employee intends to enforce his constitutional rights or a right under a statutory regulation, the civil court will have the necessary jurisdiction to try a suit.....*

*38. Where the relationship between the parties as employer and employee is contractual, the right to enforce the contract of service depending on personal volition of an employer is prohibited in terms of Section 14(1)(b) of the Specific Relief act, 1963. It has, however, four exceptions, namely, (1) when an employee enjoys a status i.e. his conditions of service are governed by the rules*

*framed under the proviso appended to Article 309 of the Constitution of India or a statute and would otherwise be governed by Article 311 (2) of the Constitution of India; (2) where the conditions of service are governed by statute or statutory regulation and in the event mandatory provisions thereof have been breached; (3) when the service of the employee is otherwise protected by a statute; and (4) where a right is claimed under the Industrial Disputes Act or sister laws, termination of service having been effected in breach of the provisions thereof."*

*42. When there is a doubt as to whether the civil court has jurisdiction to try a suit or not, the courts shall raise a presumption that it has such jurisdiction.*

If reinstatement of an employee of a non-statutory body in case of violation of some statutory provision (Act, Rule or Regulation) is held to be not warranted by law (Specific Relief Act) then exactly on the same principle the management of a private industry can also not be directed to take back a terminated workman even if his termination is in violation of Industrial Dispute Act or sister laws. The second principle and third principle in case of non-statutory bodies are to co-exist, either reinstatement may be granted in both the cases or in none of the cases.

As in some cases Supreme Court confined the applicability of the third exception to statutory body, hence, it is necessary to ascertain what is statutory body. Apart from the applicability of the third exception, the other reason for deciding whether a body is statutory or not is that fundamental rights (particularly Articles 14 and 16 of the Constitution) were held to be available only against statutory bodies. The third reason is that it was considered that normally writ could not be issued against non-statutory bodies. Sometimes all the three reasons merge together.

For the purposes of Chapter III of the Constitution dealing with the fundamental rights and chapter IV dealing with directive principles State is defined under Article 12 of the Constitution as follows:-

> ***12. Definition.***—*In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.*

The concept of 'other authority' included in the definition of State under Article 12 has been gradually enlarged by the Supreme Court. The **important milestones** are:-

*Rajasthan State Electricity Board v. Mohan Lal, AIR 1967 SC 185* (CB) holding that a corporation constituted under a statute was state under Article 12*, Sukhdev Singh v. Bhagat Ram Sardar Singh Reghuvanshi AIR 1975 SC 1331* (CB) holding that reinstatement could be directed if termination was in violation of Regulations framed by a corporation under powers conferred upon it by the Act creating it (particularly the concurring but separate judgment of Mathew, J heralding drastic change in the perception of State), *Ramana Daya Ram Shetty v. International Airport Authority of India, AIR 1979 SC 1628* the most important judgment on the point, universally followed developing the concept of instrumentality or agency of State, *Som Prakash Rekhi v. Union of India, AIR 1981 SC 212* holding that Bharat Petroleum Corporation Ltd. a Government company was alter ego of central Government hence included in the definition of state under Article 12, *Ajai Hasia v. Khalid Mujib Sahravardi, AIR 1981SC 487* (CB) holding that a government formed and controlled society running a college is included

in the definition of State, hence, it cannot act arbitrarily in the matter of admission of students, *Central Inland Water Transport Corporation v. B.N. Gangoli, AIR 1986 SC 1571* holding that the appellant being Government company was covered by Article 12 hence it could not terminate the services of its permanent employees without due inquiry even if there was a contrary regulation (this view was fully approved in the Constitution Bench authority of *DTC v. DTC Mazdoor Congress AIR 1991 SC 101)*, *Pradip Kumar Biswas v. Indian Institute of Chemical Biology, 2002 (5) SCC 111* (CB of 7 Judges) holding that CSIR even though a registered society is State under Article 12 as government has formed it, controls it and financially supports it and overruling *Sabhajit Tiwari v. Union of India, AIR 1975 SC 1329* a constitution Bench of 5 judges. The last authority (*P.K. Biswas*) has considered all the important previous authorities and traced the upward journey of the Supreme Court in this regard. (Relevant paragraphs quoted in Appendix B) In a recent authority reported in *BCCI v. Cricket Association of Bihar 2015 (3) SCC 251* : *AIR 2015 SC 3194* it has again been examined in depth, that against whom writ may be issued.

In *P.K. Biswas (2002),* supra, it was held in para 25 that what was *obiter dicta* in the judgment of Mathew J., in *Sukhdev Singh (1975)* and *Ramana (1979)* supra became *ratio decidendi* for *Ajai Hasia* (1981) supra. The reason given is that in both the cases of *Sukhdev* and *Ramana* the bodies concerned were corporations hence statutory bodies even according to the limited restricted definition of the same prevalent till then, hence, Article 12 was squarely applicable.

Local bodies are undisputedly statutory bodies. As far as corporations created by or under an Act are concerned, since the judgment of the Supreme Court in *Rajasthan SEB (1967)* supra they have

been consistently held to be statutory bodies and other bodies included in the definition of Article 12.

However, great difficulty arises in deciding as to whether a company incorporated under the Companies Act or a society registered under the Societies Registration Act particularly a society running an affiliated recognized educational institution (more specifically when it is aided) or a co-operative society is or is not statutory body. Neither a company is created under the Companies Act, it is only incorporated therein; nor a society is created under Societies Registration Act or Co-operative Society Act of a State. A society is first formed then it is registered under the Act. In *Ajai Hasia (1981)* supra some tests were formulated. In *P.K. Biswas (2002)* supra *Ajai Hasia* was slightly modified in para 40 and the following principle was laid down to determine whether a society or a company is State within the meaning of Article 12 or not:

> ***40.*** *The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesis, be considered to be a State within the meaning of Article 12. The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.* (underlining supplied )

Local Bodies:

(I) District Board (Agra): In *S.R. Tewari v. District Board Agra, AIR 1964 SC 1680* writ petition by an employee of District Board challenging his termination on the ground of violation of statutory provisions and for reinstatement was held maintainable.

*(II)* Municipality created by Bombay District Municipalities Act : In *Sirsi Municipality v. Cecelia Kom Francis Tellis, AIR 1973 SC 855* (C.B.) it was held that **suit** by a terminated employee of the Municipality challenging his termination and seeking reinstatement is maintainable if termination is in violation of the statutory provisions.

Corporations:

(I) State Road Transport Corporation: In *Mafatlal Narandas Barot v. J. D. Rathod, Divisional Controller, State Transport Mehsana, AIR 1966 SC 1364* (CB) it was held that a terminated employee of SRTC could approach the High Court through writ petition against his termination order, and he could be granted relief of reinstatement if termination was against mandatory provision of Road Transport Corporation Act, 1950 or the Rules or Regulations framed thereunder.

(II) (Rajasthan) State Electricity Board : In *Rajasthan State Electricity Board v. Mohan Lal AIR 1967 SC 1857* (CB) it was held that writ petition by an employee of the Electricity Board for promotion is maintainable as Electricity Board is a corporation, hence, statutory body and included in the definition of State under Article 12 of the Constitution.

(III) Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation : In *Sukhdev Singh v. Bhagat Ram S S Raghuvanshi AIR 1975 SC 1331* (CB) it was held that these bodies being corporations were statutory bodies and included in the definition of State under article 12 accordingly High Court in the writ petitions could direct reinstatement of their terminated employees if the termination orders were in violation of the regulations framed by these corporations under the powers conferred by respective Acts creating them. Regulations were held to be law and not merely part of contract of employment, as had been held in the next two authorities which were overruled. However in para 67 it was clarified that 'By way of abundant caution we state that these employees are not servants of the Union or the State.'

(IV) *U.P. State Warehousing Corporation v. C.K. Tyagi, AIR 1970 SC 1244*

(V) *Indian Airlines Corporation v. Sukhdev Singh, AIR 1971 SC 1828*

In the authorities at serial no. IV and V the appellants were held to be statutory bodies. However relief of reinstatement granted in suits was set aside on the ground that the violation was of Regulations and not of Act or Rules which view was overruled in *Sukhdev Singh* at serial no. III. Regarding U.P. State Warehousing Corporation it was again held tin *U.P. Warehousing Corporation v. Vijay Narayan AIR 1980 SC 840* that it was authority within the meaning of Article 12. It was further held that even if there was no regulation, services of a permanent employee could not be terminated without opportunity of hearing. The order of the High Court passed in writ petition setting aside termination and directing reinstatement was upheld.

(VI) Delhi Transport Corporation: In *DTC v. DTC Mazdoor Congress AIR 1991 SC 101* (CB) it was held that the Regulation of DTC permitting termination of permanent employee without inquiry was arbitrary and in violation of Article 14 of the Constitution. The order of the High Court setting aside termination under that regulation and directing reinstatement was upheld.

(VII) State Bank of India : In *SBI v. S.N. Goyal, AIR 2008 SC 2594*, *SBI v. B.K. Mitra 2011 (2) SCC 316* **suit** instituted by terminated employee of the bank (a corporation constituted by SBI Act 1955) for reinstatement was held maintainable, even though on merit such decree passed by courts below was set aside.

Companies:

(I) Bharat Petroleum Corporation: In *Som Prakash Rekhi v. Union of India, AIR 1981 SC 212* it was held that the corporation was a Government company, hence, State within the meaning of Article 12, writ petition filed before the Supreme court for enforcement of pension scheme and payment of pension was held to be maintainable.

(II) In *Central Inland Water Transport Corporation v. B.N. Gangoli AIR 1986 SC 1571* it was held that though the corporation was a Government company under section 617 of Companies Act but was State within the meaning of Article 12, hence, writ petition by its terminated employee for reinstatement was maintainable. The company, apart from being a Government company was also wholly owned by the Central Government and two State Governments jointly which financed it entirely. It was further held that rule 9(i) of the Rules framed by the Company

permitting termination of services of permanent employee by three months notice was violative of Articles 14 (fundamental right), 39 (a) and 41 (directive principles) and Section 23 Contract Act (public policy). *Tulsi Ram Patel v. AIR 1985 SC 1416* was quoted in para 105 as follows:

> *"The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus : violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is violation of Article 14; therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of 'State' in Article 12, is charged with the duty of deciding a matter."*

This is leading judgment on the point showing thorough research, wisdom and power of conviction and expression. It was fully approved by the Constitution Bench in *DTC (1991*) supra.

(III) In *Mysore Paper Mills ltd. v. Mysore Paper Mills Officers Association, AIR 2002 SC 609* it was held that the appellant

company was substantially financed and financially controlled by the Government, managed by a board of directors nominated and removable at the instance of the Government, carrying out important functions of public interest and controlled by the Government hence it was an authority under Article 12. Writ petition filed by an employee of the company against his transfer order was held maintainable.

(IV) In *M/s. Pearlite Liners Pvt. Ltd. v. Manorama Sirsi AIR 2004 SC 1373* it was held that suit by an employee of the appellant company challenging her transfer order and seeking continuance in service was not maintainable as it amounted to enforcement of private contract. It was not a Government company and no statute governed the service conditions - *Vaish Degree Colege, 1976,* infra was relied upon. Plaint was held to have rightly been rejected under Order 7 Rule 11 C.P.C.

(V) In *Nand Ganj Sihori Sugar Co. v. B.N. Dixit, AIR 1991 SC 1525,* U.P. State Sugar Corporation was holding company of appellant. The Chairman and M.D. of the holding company directed the subsidiary company, the appellant, to appoint the plaintiff/ respondent under some imaginary Government scheme. The Supreme Court held that the suit for appointment was wrongly decreed. It held that neither there was any statutory provision nor binding contract and further specific performance of contract of service could not be directed.

<u>Societies, controlled or dominated by Government:</u>

Initially even the societies constituted, managed, controlled and financed by the Government were also considered to be non-statutory bodies. Council for Scientific and Industrial Research (CSIR) being such

a society was held to be non-statutory body in *Sabhajit Tiwari v. Union of India, AIR 1975 SC 1329* (Constitution Bench). In that case an employee of CSIR had filed a writ petition under article 32 of the Constitution before the Supreme Court seeking pay parity with new entrants under articles 14 and 16. The Supreme court held that the CSIR being only a registered society was not an authority under Article 12 hence it was not subject to fundamental rights. This authority has been overruled by *P.K. Biswas* 2002 (5) SCC 111 supra and it has been held that CSIR is authority under article 12 and amenable to writ jurisdiction. In this case an employee had challenged his termination (on what ground is not clear) through writ petition before High Court which had been held to be not maintainable by the High Court in view of *Sabhajit Tiwari (1975)* supra.

Even before it was overruled, *Sabhajit Tiwari (1975)* had constantly pricked the conscience of the Supreme Court. It was explained, distinguished, criticized and watered down in *Ramana (1979), Ajay Hasia (1981), Som Prakash Rekhi (1981)* and *P.K. Ramachandra Iyer (1984), infra* as discussed in paras 24 to 32 of *P.K. Biswas, (2002)*supra.

In *Ajay Hasia v. Khalid Mujib Sehrevardi, AIR 1981 SC 487* (C.B.) it was held that the society running Regional Engineering College Srinagar, one of the 15 engineering colleges sponsored by the Government of India, was an instrumentality and agency of the Government, hence, other authority in terms of Article 12 of the Constitution. The principles laid down in *Ramana Dayaram Shetty v. International Airport Authority of India, AIR 1979 SC 1628* were reiterated and heavily relied upon. It was found that the society was under effective control of the Government. In the said case a student who had been denied admission filed writ petition before the Supreme Court. The Supreme Court entertained and allowed the writ petition holding that fixing as high a percentage of marks as 33.3

for oral interview was not proper and held that allocation of more than 15% marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid. Six tests laid down in *Ramana,* supra to determine as to whether a body can be said to be an instrumentality and agency of the Government or not were summarized in para 9 and approved. The six principles were quoted in para 27 of *P.K. Biswas (2002)* supra. However, in para 40 of *P.K. Biswas* (quoted above) the principles were slightly modified and ultimately it was held that the true test is whether the body is financially, functionally and administratively dominated by or under the control of the Government.

Following *Ajai Hasia 1981,* supra it was held in *B.S. Minhas v. Indian Statistical Institute 1983 (4) SCC 582* that Indian Statistical Institute which was a registered society was an instrumentality of the Government, hence, writ petition before the Supreme court under Article 32 was maintainable. Through the writ petition appointment of the Director of the Institute had been challenged. Writ petition was allowed.

In *P.K. Ramchandra Iyer v. Union of India 1984 (2) SCC 141* it was held that Indian Council of Agricultural Research Institute which was registered society and its affiliate the Indian Veterinary Research Institute were agencies and instrumentalities of the Government, hence other authorities under Article 12 of the Constitution and amenable to writ jurisdiction in respect of pay parity, taking back a teacher as faculty member of post graduate school and procedure for appointment.

Institute of Constitutional and Parliamentary Studies (ICPS) and National Council of Educational Research and Training (NCERT) both registered societies were held to be not other authorities within the meaning of article 12 in *Tekraj Vasandi v. Union of India, 1988 (1) SCC*

*236* and *Chander Mohan Khanna v. NCERT 1988 910 SCC 236* respectively, later following the earlier. *P.K. Biswas 2002* supra (paras 35, 36 and 38) was somewhat skeptical of this view but it neither disapproved nor approved the same.

In *All India Sainik Schools Employees Association v. Defence Minister – cum- Chairman, Board of Governors Sanik School Society 1989 Supp. (1) SCC 2005* a writ petition had been filed in the Supreme Court by some employees of Sanik Schools claiming parity with employees of Kendria Vidyalaya in the matter of pay scale and other service benefits. The writ petition was held to be maintainable and allowed. It was held that the society was instrumentality of State as it was under the control of the Government.

In *U.P. State Co-operative Land development Bank v. Chandra Bhan Dubey, AIR 1999 SC 753* it was held that the petitioner bank was State authority amenable to writ jurisdiction. The petitioner bank was a co-operative society registered under U.P. Cooperative Societies Act and was constituted under U.P. Co-operative Land Development Bank Act 1964. In the said case services of some employees had been terminated by the Co-operative society which order had been challenged through writ petition in the Allahabad High court which was allowed, termination orders were set aside and petitioners were ordered to be reinstated. The Supreme Court even though allowed the appeal on the ground that the dismissal orders were perfectly legal and in accordance with the relevant Regulation, however, a detailed discussion was made regarding maintainability of the writ petition and it was held that the cooperative society was State within the definition of Article 12, hence, amenable to writ jurisdiction and in case the termination had been in violation of the Regulations of 1975 framed by the Authority under Section 122 of U.P.

Cooperative Societies Act the reinstatement could be directed. The relevant Regulations were quoted extensively. In para 24 *Anandi Mukta S.M.V.S.S.J.M.S. Trust v. V.R. Rudani AIR 1989 SC 1607* was quoted extensively. Reading para 26 in between the lines it appears that the Supreme court was of the view that institution of the suit would have been a better remedy but writ petition was not barred on that ground.

In *Ram Sahan Rai v. Sachiv Sahkari Prabandhak, AIR 2001 SC 1173* arising out of a suit, District Co-operative bank which was registered under U.P. Co-operative Societies Act 1965 and constituted under the U.P. Co-operative Land Development Bank Act 1964 (like the appellant in the previous case) was held to be statutory body and State under Article 12 as it was found that State Government exercises all pervasive control over the bank and its employees are governed by Statutory Rules and Regulations. High Court in Second Appeal had agreed that termination of the plaintiff employee was in violation of Regulation 85 of Regulations of 1975 but it had set aside the decree for reinstatement passed by the lower appellate court on the ground that contract of service could not be specifically enforced, placing reliance upon *Vaish Degree College, 1976,* infra. Supreme Court reversed the judgment of the High Court.

In *S. Basu v. W.B. Housing Board 2005 (6) SCC 289* even though it was held that the writ petition filed before the High Court regarding allotment of car parking slots by the cooperative housing society was not maintainable, however a general observation was made that in case some mandatory provision had been violated writ petition would have been maintainable.

In *Madhya Pradesh Rajya Sahakari Bank Maryadit v. State of M.P. AIR 2007 SC (Supp.) 540* in para 9 it was held that the writ petition filed against a co-operative society was maintainable if some mandatory

statutory provision had been violated by the Co-operative Society. It was further held that it was not necessary to decide as to whether the co-operative society was State or not. In the said case order of the Registrar of the co-operative societies framing a rule regarding reservation in service was set aside on the ground that it was not warranted by the law.

However in *Integrated Rural Development Agency v. Ram Pyare Pandey 1995 Supp. (2) SCC 495* it was held that appellant IRDA was a Society registered in U.P. under Societies Registration act hence suit instituted by one of its terminated employees challenging termination and seeking reinstatement was not maintainable. Reliance was placed upon *Nand Ganj Sihori Sugar Company AIR 1991 SC 1525*, supra. It was held that it was not proved that IRDA was either owned or controlled by the State Govt. or was an instrumentality of the State. The termination was not in violation of any statutory provision even though it was in violation of rules framed by governing body of the Society pursuant to Section 20(a) of the Articles of Association.

Private Societies:

As far as private societies running educational institutions where conditions of service of teachers and other employees are governed by statutory provisions (Act, Rules or Regulations) are concerned it has been held in *Vaish Degree College v. Lakshmi Narain AIR 1976 SC 888* and in 5 other cases following the said authority that the societies are not statutory bodies hence suit against termination or suspension of a teacher even if in violation of some statutory provision and for reinstatement is not maintainable. The third exception was confined to statutory bodies. The college in question was affiliated to Agra University. Under Agra University Act it was provided that at the time of entry in service an agreement must be executed between the management of the

college and the teacher/ employee containing such conditions which might be prescribed (similar is the position under Section 32 of U.P. State Universities Act, 1973). In the case in question it was found that no such agreement had been entered into. Suit was instituted by the respondent against his termination order. As no agreement incorporating necessary conditions of service had been entered into, hence, there was no violation of any statutory provision in termination of service except of Section 25-C (2) of the Agra University Act requiring previous approval of Vice Chancellor which was not obtained. The Supreme Court after summarizing almost all the authorities on the point reiterated the three exceptions confining the third exception to non-statutory bodies. However, in para 19 the alternative argument of counsel for the respondent that in view of the case reported in *Sirsi Municipality v. Com Francis AIR 1973 SC 855* a fourth category to the exceptions was also included namely an institution which even though was a non-statutory body but was a local or a public body was noted. Para 20 starts as "*assuming for the sake of argument but not deciding that this decision (Sirsi Municipality supra) has extended the scope of the exceptions so that the appellant Executive Committee though a non- statutory body will still be bound by the statutory provisions of law……..*" Thereafter in several paragraphs it was discussed that the conduct of the plaintiff / respondent disentitled him from enforcement of contract of service and as under Specific Relief Act specific performance is discretionary, hence, plaintiff did not deserve decree for reinstatement. The case was decided by a 3 Judge Bench. Justice P.N. Bhagwati delivered dissenting judgment. He held that the three exceptions formulated by the Supreme Court were not exhaustive. Justice Bhagwati observed in para 34, after referring to *Sirsi Municipality* as follows:-

*"It may be a possible view – and some day this court may have to consider it – that where law as distinct from contract imposes a mandatory obligation prescribing the kind of contract which may be entered into by an employer and the manner in which alone the service of an employee may be terminated, any termination of service effected in breach of such statutory obligation would be invalid and ineffective and in such a case the court may treat it as null and void."*

However, ultimately Justice Bhagwati held that the conduct of the plaintiff disentitled him to the relief of reinstatement hence he agreed with the final order by the majority.

In fact, Justice Bhagwati in his dissenting judgment sowed the seed for what he subsequently held in the landmark cases of *Ramana D. Shetty (1979)* and *Ajai Hasia (1981).* It is interesting to note that this authority of *Vaish Degree College* was neither referred in *Ramana* nor in *Ajai Hasia* even though in the Constitution Bench of *Ajai Hasai,* Justice Fazal Ali who dictated majority judgment of *Vaish Degree College* was also one of the members of the Bench. In *Ajai Hasia* on behalf of all the five judges constituting the Bench Justice Bhagwati wrote the judgment with which all other four judges agreed.

Justice Fazal Ali mainly relied upon the Constitution Bench of *Sabhajit Tewari (1975).* As in *Sabhajit Tewari* even CSIR which was even though a society but fully controlled by the Government was held to be not amenable to writ jurisdiction and not an authority within the meaning of Article 12, hence, a private society running an educational institution could also not be treated to be other authority. As *Sabhajit Tewari* has been overruled in *P.K.Biswas (2002)* supra, hence the very basis of majority judgment of *Vaish Degree College* has vanished. In *Sabhajit*

*Tewari* it was held that the society (CSIR) did not have a statutory character as it was incorporated in accordance with the provisions of the Societies Registration Act.

Majority view in *Vaish Degree College 1976,* supra, was immediately followed in *Arya Vidya Sabha v. K.K. Srivastava AIR 1976 SC 1073* even though it was observed that :

> *"May be there is much to be said in favour of the opposite view set out by Sri Justice Bhagwati but we are bound by the decision of the Court as expounded by the majority view."*

Same view, following *Vaish Degree College,* has been taken in the following cases:-

i) *J.Tiwari v. J.D. Vidya Mandir, AIR 1981 SC 122* (3 Judges)

ii) *Kayastha Pathshala Allahabad v. Rajendra Prashad, AIR 1990 SC 415*

iii) *Shiv Kumar Tiwari v. Jagat Narain Rai, AIR 2002 SC 211*

These three authorities related to High Schools or Intermediate Colleges run by private Societies and governed by U.P. Intermediate Act 1923.

vi) *Dipak Kumar v. Director of Public Instruction, AIR 1987 SC 1422* (from Meghalay)

However there has never been any doubt that teachers or other employees of such educational institutions can approach the High Court through writ petition and High Court can grant the relief of reinstatement if termination / suspension is in violation of statutory provisions vide *Aley Ahmad Abidi v. DIOS AIR 1977 All 539* (F.B.), *Agarwal Digambar Jain Samiti Agra v. Badui Prasad Srivastava 1984 ALR 470 : 1984 UP LBEC 638 (D.B.) (*noticed Shiv Kumar Tiwari, infra), *Indra Pal Gupta v. Management Committee M.I. College AIR 1984 SC 1110*(3 judges), *Shiv*

*Kumar Tiwari v. Jagat Narain Rai AIR 2002 SC 211* (all in respect of U.P. Intermediate Colleges) and *Vidya Dhar Pandey v. V.G. Siksha Samiti AIR 1989 SC 341* (from M.P.)

Under different States' Educational Acts, a teacher or other employee of a private recognized / affiliated (aided or unaided, minority or non-minority) school / college whose service have been terminated can challenge the termination before specified Tribunal or Authority and seek reinstatement (if the termination is against statutory provisions i.e. Act, Rules or Regulations). In *Shantiniketan Hindi Primary School v. Pal Hariram Ramavtar AIR 2010 SC 656* and *Bhartiya Seva Samaj Trust Tr. Pres. v. Yogeshbhai Ambalal Patel AIR 2012 SC 3285,* both from Gujarat, and in *Ms. G. Vallikumari v. Andhra Education Society AIR 2010 SC 1105* from Delhi it was held that the Tribunals constituted under respective Education Acts rightly directed reinstatement after setting aside termination orders. In *B.T. Krishnamurthy v. Sri Basaveswara Education Society AIR 2013 SC 1787* order of reinstatement passed by the tribunal constituted under Karnataka Education Act was found to be wrong on facts. However the power of the tribunal to direct reinstatement was not questioned.

The view that termination of service, by a recognized educational institution run by a private society, in violation of the statutory provision can be set aside and **reinstatement can be directed only in writ petition and not in suit** is not a sound proposition and there appears to be no intelligible object with which the distinction may have any nexus. (In *Central Inland Water Transport Corporation v. B.N. Ganguly AIR 1986 SC 1571* (para 104) also it has been stated in passing that reinstatement can be granted in writ petition and not suit. The observation is obiter as in the said case it was not argued that instead of writ petition suit should

have been filed.) The applicability of the principle laid down in Section 14(1) (b) of Specific Relief Act or the exceptions thereto does not depend upon the forum which a terminated employee may choose. Before passing of Administrative Tribunal Act in 1985 a terminated central government employee could either institute suit or file writ petition and if termination was found to be in violation of article 311 of the Constitution, the civil Court or the High Court, as the case might be, could direct reinstatement. If first exception is not confined to writ jurisdiction, third exception can also not be so confined. In the authority of *Vaish Degree College, 1976,* supra, the previous authorities which were considered, related to both suits as well as writ petitions. *Sirsi Municipality, 1973, Kumari Regina, 1971 U.P. State Warehousing Corporation, 1970, Indian Airlines 1971* related to suits and *S.R. Tiwari, 1964* and *Vidya Ram Mishra, 1972* related to writ petitions. Even if *Vaish Degree College 1976* is read in between the lines with powerful microscope it cannot be discerned that the majority judgment intended to lay down that third exception would not apply to suit but would apply to writ petition.

In *Rajasthan SRTC v. Bal Mukund Bairsva (2) 2009 (4) SCC 299* (3 judges) relating to termination of service of an employee by State Road Transport Corporation it has categorically been held in para 39 that Civil court has full jurisdiction to direct reinstatement. Last sentence of the para is quoted below:-

> *"In the event it is found that the action on the part of the state is violative of the constitutional provisions or the mandatory requirement of a statute or statutory rules the Civil court would have the jurisdiction to direct reinstatement with full back wages."*

Accordingly, if majority view of *Vaish Degree College* is correct then reinstatement of such teachers and other employees can be directed

neither in suit nor in writ petition. Similar will be position of the employees of such cooperative societies which are not state under Article 12 of the Constitution.

If an authority or Tribunal constituted under Education Act of some State can direct reinstatement if suspension / termination is in violation of the statutory provision then there is no reason as to why Civil Court cannot do the same in suit, if suit is not barred under the relevant Education Act.

Chapter III of the Regulations framed under Section 16G (1) and (2) of U.P. Intermediate Education Act provides the grounds on which services of a permanent teacher may be terminated. It further provides that opportunity of hearing must be provided in the manner prescribed therein. Section 16G (3) of the Act requires that before termination of service, prior approval of DIOS must be obtained, who shall also, before granting the same, hear the teacher concerned. The order of DIOS is appealable before Regional Deputy Director. According to sub-section (4) orders made by competent authority under sub section (3) cannot be questioned in any Court. Accordingly order of DIOS granting approval to termination and order of Deputy Director rejecting appeal can be challenged only in writ petition and not suit. However if the management terminates the services without providing opportunity and / or without approval of DIOS, there is no reason why suit for reinstatement will not be maintainable and only writ petition will be maintainable.

It is submitted with respect that for the following reasons, and / or subsequent authorities majority view of *Vaish Degree College 1976,* cannot be said to be lay down correct law:

i) *Sabhajit Tiwari 1975,* relied upon, has been overruled in *P.K. Biswas 2002*

ii) *Ramana 1979, Hajai Hasia 1981, P.K. Biswas 2002* and several mile stone authorities in between, supra have developed the principle of instrumentality / agency of State and changed the concept of state and statutory body drastically.

iii) A private body, governed in certain areas of its activities by statutory provisions may be treated to partake the nature of statutory body while functioning in those areas.

iv) The non-applicability of third exception to the society was not finally, authentically decided (paras 19 and 20).

v) It was held that conduct of the plaintiff disentitled him to the relief of specific performance / reinstatement.

The minority view of Justice Bhagwati commends itself more to law, justice and reason.

Violation of Regulations:

In *E.C. of U.P. State Warehousing Corporation v. Chandra Kiran Tyagi, AIR 1970 SC 1244* and *Indian Air Lines Corporation v. Sukhdeo Rai, AIR 1971 SC 1828,* it was held that Regulations are not binding law hence protection granted thereunder is not statutory and it is only deemed to be part of contract between the corporation and the employee. Suits challenging termination orders of employees even though in violation of respective Regulations, were held to be not maintainable. The Constitution bench authority (of 5 judges) in *Sukhdev Singh v. B.S.R. Raghuwanshi, AIR 1975 SC 1331* disapproved the said view in paras 30 to 33. It held at the end of para 30 that:

*"In this view a regulation is not an agreement or contract but a law binding the corporation, its officers, servants and the*

*members of the public who come within the sphere of its operations. The doctrine of ultra vires as applied to statutes, rules and orders should equally apply to the regulations and any other subordinate legislation. The regulations made under power conferred by the statute are subordinate legislation and have the force and effect, if validly made, as the Act passed by the competent legislature."*

At the end of para 31 it was held that both the authorities were in direct conflict with Constitution Bench judgment of *Mafat Lal Naran Das Barot v. D. Rathod, D.C. State Transport Mehsara, AIR 1966 SC 1364.* In para 32 and 33 it was held that Rules or Regulations do not have any substantial difference and are binding on the authorities. Even though word 'overruled' was not used but in *Vidya Dhar Pandey v. V.G.S. Samiti, AIR 1989 SC 341* it has been held in para 11 that *Indian Air Lines* has been overruled in *Sukhdev Singh.*

Violation of Articles 14 and 16 and principles of National Justice :-

In *U.P. Warehousing Corporation v. V.N. Vajpayee AIR 1980 SC 840,* supra, it was held that even in the absence of any rule or regulation a corporation cannot terminate the service of its permanent employee without opportunity of hearing. In *Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, AIR 1986 SC 1571,* supra and *DTC v. D.T. C. Mazdoor Congress AIR 1991 SC 101,* supra it was held that statutory Regulation of a Government company or a corporation permitting termination of a permanent employee without opportunity of hearing was arbitrary and violative of articles 14, 16, 39 and 41 of the Constitution and Section 23 Contract Act. In the first two cases reinstatement orders passed by High Court were upheld. In the third case (DTC) the employer

had itself, after filing of writ petition, reinstated the employee. Same thing has been held in *Rajasthan SRTC v. B.M. Bairwa 2009 (4) SCC 299,* para 48 which is quoted below:-

> *"**48.** In a case where no enquiry has been conducted, there would be violation of the statutory Regulation as also the right of equality as contained in Article 14 of the Constitution of India. In such situation, a civil suit will be maintainable for the purpose of declaration that the termination of service was illegal and the consequences flowing there from. However, we may hasten to add if a suit is filed alleging violation of a right by a workman and a corresponding obligation on the part of the employer under the Industrial Disputes Act or the Certified Standing Orders, a civil suit may not lie. However, if no procedure has been followed as laid down by the statutory Regulation or is otherwise imperative even under the common law or the principles of natural justice which right having arisen under the existing law, sub-para (2) of paragraph 23 of the law laid down in Premier Automobiles Ltd. (supra) shall prevail."*

Para 9 of *P.K. Biswas v. Indian Institute of chemical Biology 2002 (5)SCC 111* is quoted below:-

> *9. The range and scope of Article 14 and consequently Article 16 have been widened by a process of judicial interpretation so that the right to equality now not only means the right not to be discriminated against but also protection against any arbitrary or irrational act of the State. It has been said that :-*
>
> *"Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment". E.P. Royappa v. State*

*of Tamil Nadu, 1974(2) SCR 348 : 1974(4) SCC 3 : (See also Maneka Gandhi v. Union of India, 1978(1) SCC 248).*

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Most of the Service Rules / Regulations provide departmental appeals, revisions etc. It is desirable that before instituting suit, such remedies must be exhausted. Thereafter suit will be perfectly maintainable. If suit is instituted without exhausting departmental remedies and objection in that regard is promptly taken then the suit may be dismissed as premature and in that eventuality fresh suit may be instituted after exhausting departmental remedies, if relief is not granted therein. However, plea of this defect in the suit cannot be permitted to be raised after a long time and in appeal or second appeal vide *Ramendra Kishore Biswas v. State of Tripura, AIR 1999 SC 294(three judges).*

However in cases covered by third exception the Civil court, in view of sections 20(1) and 34 of Specific relief Act and general restrictions on grant of specific relief which is equitable in nature, may refuse to grant such relief if other circumstances so warrant vide paras 20 to 28 of *Executive Committee of Vaish Degree College Shamli v. Lakshmi Narain, 1976(2) SCC 58: AIR 1976 SC 888,* supra. Para 26 (of SCC) is quoted below:

*"26.Apart from these decisions it would appear that Section 20(1) of the Specific Relief Act clearly codifies this principle and may be extracted as follows:*

*"20. (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court*

*is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal."*

*Similarly Section 34 of the Specific Relief Act also gives a discretion to the Court to give a declaration of the legal character. Section 34 runs thus:*

*"Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*

*Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."*

In *Aligarh Muslim University v. M.H. Khan, AIR 2000 SC 2783* it has been held that if the terminated employee of the University has got nothing to say against the ground on which his services were terminated, in the writ petition through which termination order is challenged then termination cannot be set aside merely on the ground that opportunity of hearing was not provided before termination. Similarly in *Ashok Kumar Sonker v. Union of India, 2007 (4) SCC 54* where a teacher of Banaras Hindu University had challenged his termination through writ petition on the ground of denial of opportunity of hearing it was held following inter alia the above authority that as the terminated teacher did not possess minimum qualification hence his appointment was illegal and void and his termination could not be set aside only on the ground of violation of principles of natural justice as under the circumstances of the case the

opportunity would have been futile exercise. Same principle will apply to suits.

(Both the universities (Aligarh Muslim University and Banaras Hindu University) have been created by separate Acts.)

In *Ashok Kumar Srivastava v. National Insurance Co. Ltd., AIR 1998 SC 2046* (2 judges) it has been held that under certain circumstances declaration to the effect that termination of service is illegal may be granted by civil court even though the case may not be covered by any of the above exceptions. In this regard it has been held that section 14(1)(b) of Specific Relief Act 1963 prohibiting specific performance of contract of service is in chapter II and declaration (Section 34) is in chapter VI hence the former does not control the latter. It has further been held that in respect of declaratory decree, Specific Relief Act is not exhaustive. It is submitted with respect that this point was not necessary to be decided as it was raised by respondent and the appeal was decided by the Supreme Court on another (main) point in favour of the respondent by dismissing the same. Secondly the view is not in accordance with several other earlier authorities discussed or referred in earlier part of this synopsis particularly the Constitution Bench (5 judges) authority reported in *Sirsi Municipality v. Kom Fracis, AIR 1973 SC 855,* part of para 15 of which is quoted below:-

> *"Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of finding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of*

*specific performance of contract for personal services. Such a declaration is not permissible under the law of Specific Relief Act."*

## 12. Labour Matters:

In respect of labour matters, suit is not maintainable if grievance is made regarding violation of rights which are created by Industrial Disputes Act 1947 (or U.P. Industrial Disputes Act 1947) or sister laws like Industrial Employment (standing orders) Act 1946(Standing Orders certified there under) . Such grievance can be made only before the forum created under the Industrial Disputes Act i.e. Labour Court or Industrial Tribunal. This aspect has been considered by the Supreme court in several authorities including *Premier Automobiles Ltd. v. K.S. Wadke of Bombay, AIR 1975 SC 2238:1976(1) SCC 496.* (The findings were summed up in para 23) and *Rajasthan SRTC v. Krishna Kant, 1995 (5) SCC 75* (3 judges) (principles were summarized in para 35). Slightly dissenting view was expressed in other authorities hence matter was referred by Division Bench of 2 judges to 3 Judge Bench. Ultimately the controversy was resolved by a three judges Bench authority of the Supreme Court in *Rajasthan SRTC v. Bal Mukunda Bairwa (2) 2009 (4) SCC 299* approving *P. Automobiles* fully and *Krishna Kant* substantially. Paras 36, 37, 41 and 42 of the said authority are quoted below:

> *"**36.** If an employee intends to enforce his constitutional rights or a right under a statutory regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and corresponding obligations only in terms of the provisions of the Industrial Disputes Act or the sister laws so called, the civil court will have none. In this view of the matter, in our considered opinion, it would not be correct to contend that only because the employee concerned*

*is also a workman within the meaning of the provisions of the 1947 Act or the conditions of his service are otherwise governed by the standing Orders certified under the 1946 Act, ipso facto the civil court will have no jurisdiction. This aspect of the matter has recently been considered by this court in Rajasthan SRTC v. Mohar Singh, (2008) 5 SCC 542. The question as to whether the civil court's jurisdiction is barred or not must be determined having regard to the facts of each case.*

***37**. If the infringement of the standing Orders or other provisions of the Industrial Disputes Act are alleged, the civil court's jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. If no right is claimed under a special statute in terms whereof the jurisdiction of the civil court is barred, the civil court will have jurisdiction."*

***41**. There is another aspect of the matter which cannot also be lost sight of, namely where the conditions of service are governed by two statutes, the effect thereof on an order passed against an employee / workman in violation of a rules which would attract both the statutes. An attempt shall be made in a case of that nature to apply the principles of "harmonious construction.*

***42**. When there is a doubt as to whether the civil court has jurisdiction to try a suit or not, the courts shall raise a presumption that it has such jurisdiction."*

(Para 23 of *Premier Automobile,* supra, and para 35 of *Krishna Kant,* supra, were quoted with approval in paras 22 and 25 of this authority)

Same view was taken in *C.T. Nikam v. Municipal Corporation of Ahmedabad AIR 2002 SC 997* (3 judges) extensively quoting and placing reliance upon *Krishan Kant 1995,* supra and *Chief Engineer, Hydel Project v. Ravinder Nath AIR 2008 SC 1315* (both the authorities not noticed in the above authority), *R.S.R.T.C. v. Deen Dayal Sharma AIR 2010 SC 2662* (following the above authority) and *Bihar State Electricity Board v. Ram Deo Prasad Singh AIR 2011 SC 3423* (not referring to the above authority and placing reliance only on *Premiere Automobile*.)

However, in the said authority [*Rajasthan SRTC v. B.M. Bairwa (2)]* the view of *U.P. S.R.T.C. v. Krishnakant* (supra) that the suits decided by then should not be disturbed was not approved and it was held in para 50 that in view of 7 Judges Bench decision of the Supreme Court reported in *A.R. Antulay v. R.S. Nayak, 1988 (2) SCC 602, if* such suit was not maintainable then no order of any Court even of the Supreme Court could make it maintainable.

Industrial Disputes Act creates new rights under different sections including Sections 25-F, 25-G and 25-H, as stated in para 26 of *Balmukund,* supra. Such rights can be enforced only through labour court and no suit in this regard is maintainable. The most frequently used provision is Section 25-F (equivalent to Section 6-N of U.P. Industrial Disputes Act) providing that before retrenching a workman who has worked for 240 days in an year, one months notice or salary and some compensation depending upon the length of the service shall be given/ paid. In most of the cases the

grievance is that service has been terminated without following this provision.

In respect of a right of workman under Industrial Disputes Act or sister laws which is also granted by other laws (e.g. regulations framed by statutory Authority) it was held in the above authority [*Rajasthan SRTC v. B.M. Bairwa (2)*] that in case of violation of such right, the aggrieved workman has got option either to approach Civil Court or Labour Court, paras 31 to 37 (paras 36 and 37 have already been quoted above).

Industrial Disputes Act or U.P. Industrial Disputes Act does not apply to the employees governed by U.P.Cooperative Societies Act 1965 and the Rules and Regulations framed thereunder. The latter Act is a complete Code in service matters vide *Ghaziabad Zila Sahkari Bank v. Addl. Labour Commissioner 2007 (11) SCC 756 (paras 61 to 65).* In this authority it has also been held that even though section 135 of the U.P. Co-operative Societies Act directing that provisions of both the Industrial Disputes Acts shall not apply to Co-operative Societies has not been enforced, however, under general principles the Act is to prevail upon both the Industrial Disputes Acts. This authority did not notice an earlier authority in respect of U.P. Co-operative societies Act itself holding that labour court also had the jurisdiction (*Agra District Cooperative Bank Ltd. v. Prescribed Authority Labour Court, U.P., AIR 2001 SC 2396*). A contrary view has been taken in *Dharappa v. Bijapur Co-operative Milk Producers Societies Union Ltd., AIR 2007 SC 1848* also in respect of Karnataka Co-operative Societies Act without noticing *Ghaziabad Z.S. Bank*.

## 13. Wakf Act 1995

Sections 6 and 7 of the Act provide for determination of certain disputes regarding waqf only by the Waqf Tribunal. (The Act was extensively amended by Act No. 27 of 2013). Section 83 provides for the constitution of Tribunals and matters cognizable by them. Section 83 (1) before and after its amendment in 2013 is quoted below:-

Before amendment:

> *"**83. Constitution of Tribunals, etc.**- (1) The state Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunal."*

After amendment

> *"**83. Constitution of Tribunals, etc.**- (1) The state Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, <u>eviction of a tenant or determination of rights and obligations of the lessor and the lessess of such property,</u> under this Act and define the local limits and jurisdiction under this Act of each of such Tribunal."*(underlining supplied; underlined portion was added in 2013)

Section 85 provides for bar of jurisdiction of Civil Court etc. The section, before and after its amendment in 2013 is quoted below:'

Before amendment:

> *"**85. Bar of jurisdiction of Civil Court:**-No suit or other legal proceedings shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf property or other matter which is required by or under this Act to be determined by a Tribunal."*

After amendment:

> *"**85. Bar of jurisdiction of Civil Court, revenue Court and any other authority:**-No suit or other legal proceedings shall lie in any Civil Court, Revenue Court and any other authority in respect of any dispute, question or other matter relating to any Waqf property or other matter which is required by or under this Act to be determined by a Tribunal."*

The amendment of 2013 was enforced w.e.f. 1.11.2013 through notification dated 29.10.2013 No. S.O. 3292(E) published in the Gazette of India dated 31.10.2013.

Through notification dated 3.3.2014, No. 360/L II-2-2014-2(279)-13, published in U.P. Gazette Extra Part 4, dated 3.3.2014, two tribunals one at Lucknow and other at Rampur have been constituted and specified districts of western U.P. have been brought under the jurisdiction of Rampur Waqf Tribunal and the rest (specified) districts under Lucknow Tribunal.

Supreme Court has considered these provisions in the following cases:-

1. *Sardar Khan v. Syed Nazmul Hasan (Seth), AIR 2007 SC 1447* [The jurisdiction of Waqf Tribunal does not extend to the suits pending on the date on which Waqf Act was enforced in view of Section 7(5)]
2. *Board of Wakf , West Bengal v. Anis Fatma Begum, 2010 (14) SCC 588* (Waqf Tribunal has got exclusive jurisdiction to deal with the questions relating to demarcation of waqf property)
3. *A.J.P.P. Committee v. P.V. Ibrahim Haji, AIR 2013 SC 3530* (Dispute with regard to management and peaceful enjoyment of Mosque and Madarsa and assets relating to waqf is to be decided by the Tribunal and not Civil Court)
4. *Bhanwar Lal v. Rajasthan Board of Muslim Wakf, AIR 2014 SC 758* (It was held that suit for cancellation of sale-deed, rent, possession is to be tried by Civil Court and not by the Waqf Tribunal, and for rendition of account and for removal of trustees by the Tribunal)

EVICTION OF TENANT

5. *Ramesh Gobindram v. Sugra Humayun Mirza Wakf*, *AIR 2010 SC 2897* (It was held that suit for eviction against the tenant from the property which is admittedly waqf property has to be filed before the Civil Court and not before the Waqf Tribunal.)
6. *Haryana Wakf Board v. Mahesh Kumar, AIR 2014 SC 501* (Land in dispute was claimed by the Waqf Board to be part of graveyard. It had been given on lease by the Waqf Board in 1969.In 1970 the entire land had been declared as waqf property by notification under section 5(2) of previous Waqf Act of 1954. Suit for eviction was instituted by the waqf board. The tenant denied the character of the property being waqf (para 2). The Supreme court held that as the question involved was as to whether property was waqf property or

not hence only the Tribunal had the jurisdiction and not the civil Court where the suit had been instituted. (para 10)

With respect it is submitted that the Supreme Court did not take into consideration two things. Firstly, it is mentioned in para 1 of the judgment itself that the Waqf Board had allotted the land to the lessee. Accordingly, the lessee or his sub-lessee/ assignee could not deny the character of the property to be waqf property and the right of the Wakf Board in view of Section 116 of Evidence Act. Secondly, as the property had been declared as waqf property by notification under the previous Wakf Act of 1954, hence, there was no sense in asking Waqf Board to again seek declaration from the Waqf Tribunal that the property was waqf property. If the tenant or the subtenant was questioning the character of the property and asserting that it was not waqf property then it was for him to approach the tribunal if under the Wakf Act it was permissible for him to do and if such claim was within the limitation under the said Act. Thirdly, mere declaration of property to be waqf by the Tribunal would not be sufficient for eviction of the tenant for which purpose suit had to be filed as under the un-amended Section 83(1) of Waqf Act 1995 Waqf Tribunal had no jurisdiction to entertain suit for eviction of tenant of waqf property. None of the authorities relied upon in the judgment has held that relief for eviction of tenant of allegedly waqf property could be granted by the Tribunal under any circumstances, even if the tenant asserts that the property in dispute is not waqf property and ultimately Tribunal holds that the property is waqf property.

7. *Faseela M. v. Munnerul Islam Madrasa Committee, AIR 2014 SC 2064, (*Mutawalli, Madrassa Committee had filed a suit for eviction

against the tenant before the Waqf Tribunal. The tenant denied that the property was Waqf's property. The Supreme Court held that Waqf Tribunal had no jurisdiction and Civil Court was competent to entertain the suit. )

It is a bit difficult to reconcile the last two authorities. In the later authority of *Faseela* the earlier authority of *Haryana Waqf Board* has not been considered. In the authority of *Faseela* in para 13 it was specifically mentioned that the counsel for Mutawalli of the waqf argued that only the Waqf Tribunal had jurisdiction as 'one of the questions for determination is whether the suit property is waqf property or not'. However, the effect of denial of tenant regarding the waqf character of the property was not considered. In para 17 it was held that 'matter before us is wholly and squarely covered by *Ramesh Gobind Ram* (at serial no. 5, supra). However, in *Ramesh Gobind Ram* the property was admittedly waqf property as mentioned in its para 22 as quoted in para 12 of *Faseela* itself.

Before the amendment of Section 83(1) in 2013 Waqf Tribunal was not authorized to deal with the matter pertaining to eviction of tenant. However, through amendment of 2013 this power has specifically been conferred upon the Tribunal. Through amendment it has not been provided that suits for eviction of tenants of waqf property pending at the time of amendment should be transferred to the Tribunal, accordingly they will have to be decided by the Civil Courts vide *State of Kerala v. Ramaswami, AIR 1966 SC 1738, Ishan Singh v. National Fertilizers, AIR 1991 SC 1546* and *Inacio Martins v. Narayan Hari Naik, AIR 1993 SC 1756.* Accordingly, the position of the suits instituted before the amendment of 2013 regarding their maintainability will have to be seen

as per un-amended Waqf Act, 1995. In the authority of *Faseela* at serial no. 7 supra amended Section 83(1) has been quoted. However, the position has been decided as per unamended section as the suit had been filed earlier. Even after quoting amended section it was not noticed that the amended Section specifically conferred the jurisdiction upon the Tribunal in respect of the matters relating to eviction of tenant.

## 14. Tax Matters

The leading authority of *Dhulabhai 1969* (Synopsis 2) relates to tax matters. Placing reliance thereupon it has been held in *Commissioner, Income Tax v. Parmeshwari Devi Sultania, AIR 1998 SC 1276* that Section 293 of Income Tax Act provides a specific bar against suits by providing that "*no suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act".* In the said case, in search and seizer operations cash, jewelry etc. were seized. The assessee stated that the gold ornaments belonged to another person. The version was disbelieved by Income Tax Officer and he passed an order under Section 132 (5) of the Act assessing the liability of the assessee to be about Rs. 57 lacs and directed that all the seized items which were of about Rs. 20.5 lacs should be retained with the department. The alleged owner of the gold ornaments instituted suit for partition of the same. The Supreme Court held that the suit was not maintainable as it had the effect of indirectly seeking to set aside or modify the assessment order which was not permissible by virtue of Section 293 of the Income Tax Act.

In *NDMC v. Satish Chandra AIR 2003 SC 3187,* it was held that civil suit to challenge the assessment and levy of property tax on a property under Punjab Municipal Act was not maintainable. Under the Act appeal is provided under Section 84 against assessment etc. Under Section 86 of the Act it is provided that no objection regarding valuation or assessment shall be taken nor liability of any person to be taxed be questioned in any other manner than provided by the Act. The Supreme Court held that the jurisdiction of Civil Court was

impliedly barred as Section 84 provided right of appeal. (For similar U.P. Acts see synopsis 17)

In *Srikant Kashinath Jituri v. Corporation of the City of Belgaum AIR 1995 SC 288* it has been held that the mere fact that under a taxing statute, the assessed tax is to be deposited before filing appeal, against assessment order, is no ground to make suit questioning assessment order maintainable. However, it was held that if the condition is too onerous then writ petition may be maintainable.

Section 68 of U.P. Value Added Tax (VAT) Act 2008 provides as under:-

> "**68. Bar to certain proceedings –** *No assessment made and no order passed under this Act or the rules made thereunder by any authority shall be called in question in any Court, and, save as is provided in this Act, no appeal or application for revision or review shall lie against any such assessment or order."*

## 15. Limitation Act

Section 3(1) Limitation Act prescribes as follows:-

*"Subject to the provisions contained in Sections 4 to 24 (inclusive) every suit instituted appeal preferred and application made after the prescribed period shall be dismissed <u>although limitation has not been set up as a defence</u>."*(underlining supplied.)

Limitation (as well as resjudicata) is always a question of jurisdiction vide *Pandurang Dhondi Chougule v. Maruti Hari Jadhav AIR 1966 SC 153 (Constitution Bench)* followed in several authorities as enumerated in *Foreshore Co-operative Housing Society v. Praveen D. Desi AIR 2015 SC 2006.*

However period of limitation is applicable only for instituting suit. It does not apply for taking a defence vide *Bajreng Lal S. Ruia v. Shashi Kant N. Ruia, AIR 2004 SC 2546* (3 judges) para 71 which is quoted below:-

> *"71. In our view, this reasoning of the Division Bench is erroneous. Although the period of limitation prescribed in the Limitation Act, 1963, precludes a plaintiff bringing a suit which is barred by limitation, as far as any defence is concerned, there is no such limitation. In reply to the plaintiffs suit that she had derived title to the suit property by virtue of the auction sale and the certificate of sale issued by the BMC, it was perfectly open to the defendants, including Bajrangalal, to contend to the contrary. The burden of proving the facts alleged in the plaint was squarely upon the plaintiff. After recording evidence on both sides, if the evidence showed that the auction sale held by the BMC was contrary to the*

*provisions of the BMC Act and the Regulations made thereunder, the defendants were entitled to urge upon the learned single Judge to come to the conclusion recorded by the learned single Judge."*(BMC means Bombay Municipal Corporation).

## 16. Consumer Protection Act 1986

Consumer Protection Act 1986 through its section 3 provides an additional forum for the relief to a consumer and does not bar the jurisdiction of the Civil Court vide *Ethiopian Air Lines v. Ganesh Narain Saboo, AIR 2011 SC 3495* (3 judges) para 14 of which is quoted below:

> *"**14.** The learned counsel for the appellant submitted that the Act specifically states in Section 3 that "the provisions of this Act shall be in addition to and not in derogation to any other law for the time being in force." The learned counsel for the appellant also submitted that this court in the case of State of Karnataka v. Vishwabharathi House Building Co-operative Society and other (2003) 2 SCC 412: (AIR 2003 SC 1043: 2003 AIR SCW 558) in paragraphs 46 and 47 observed as under:*
>
> *46. By reason for the provisions of Section 3 of the Act, it is evident that remedies provided there under are not in derogation of those provided under other laws. The said Act supplements and not supplants the jurisdiction of the civil courts or other statutory authority.*
>
> *47. 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 to 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."*

(The authority of Ethiopian Airlines has exhaustively dealt with the principle and purpose of providing consumer forum and has held that the presumption of negligence under Carriers Act 1865 Carriage by Air Act 1972 applicable to suits is also applicable to complaints before consumer forum as under the general definition of suit, such complaints are also suits. It has also been held that permission of Central Government required before instituting suit against foreign state under Section 86 C.P.C. is not required for filing complaint under Consumer Protection Act as only very limited provisions of C.P.C. apply to the proceedings under the Act.)

Section 75 of Employees' State Insurance Act 1948 bars the jurisdiction of Civil Court but not of the forum created under Consumer Protection Act vide *Kishori Lal v. Chairman E.S.I. Corporation, AIR 2007 SC 1819* (3 judges) (para 20 latter part).

A Government employee is not consumer hence he cannot approach the forum under the Act raising any dispute regarding his service conditions or for getting retiral benefits. For such relief either suit may be instituted or claim before Tribunal concerned, if any, may be filed vide *Dr. Jagmittar Sain Bhagat v. Dir. Health Services, Haryana AIR 2013 SC 3060* (paras 16 and 17)

## 17. Local Bodies

Articles 243-O and 243-Z G of the Constitution (Contained in part IX added through 73rd amendment 1992 w.e.f. 24.4.1993) are quoted below: -

*"243-O. Bar to interference by courts in electoral matters.-*

*Notwithstanding anything in this Constitution,-*

*(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;*

*(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.]*

*243ZG. Bar to interference by courts in electoral matters.-*

*Notwithstanding anything in this Constitution,-*

*(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;*

*(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.]"*

By virtue of Articles 243 P and 243 Q Municipality means Nagar Panchayat, Municipal Council or Municipal Corporation.

After addition of part IX in the Constitution in 1992 – 93 all the States including U.P. (in 1994) amended their respective Local Bodies Acts to bring them in consonance with the amendment of the Constitution.

Under Section **13-K of U.P. Municipalities Act 1916** jurisdiction of the Civil Court is barred in respect of election under the Act. The Section is quoted below:-

"13-K. Jurisdiction of Civil Courts – *(1) No Civil Court shall have jurisdiction –*

*(a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll of a ward; or*

*(b) to question the legality of any action taken by or under the authority of the State Election Commission in respect of preparation of publication of electoral roll; or*

*(c) to question the legality of any action taken or any decision given by the Returning Officer or by any other officer appointed under this Act in connection with an election.*

*(2) No election shall be called in question except by an election petition presented in accordance with the provisions of this Act)*

Similarly under Section **164 of U.P. Municipalities Act** 1916 jurisdiction of the Civil Court is barred in respect of valuation, assessment or tax under the Act e.g. house tax and water tax. The Section is quoted below:-

"164. Bar to jurisdiction of Civil and criminal Courts in matters of taxation. – *(1) No objection shall be taken to a valuation or,*

*assessment, nor shall the liability of a person to be assessed or taxed be question in any other manner or by any other authority than to provided in this Act.*

*(1) The order of the appellate authority confirming, setting aside or modifying an order in respect of valuation or assessment or liability to assessment or taxation shall be final; provided that it shall be lawful for the appellate authority, upon application made within three months from the date of its original order or on its own motion, to review an order passed by it in appeal by a further order; provided further that no order shall be reviewed by the appellate authority on its own motion beyond three months from its date.*

---

Under Section 60 of **U.P. Nagar Mahapalika Adhiniyam** it is provided as under:-

"60. *No election under this Act shall be called in question except as provided by or under this Act."*

Election may be questioned before District Judge under sections 61 and 62 by filing election petition.

Similarly under section 226 of Nagar Mahapalika Adhiniyam jurisdiction of the Civil Court regarding valuation, assessment or tax under the Act is barred. The section is quoted below:-

"226. *No objection shall be taken to an valuation or assessment nor shall the liability of a person to be assessed or taxed*

*be questioned in any other manner or before any other authority than is provided under the Act."*

---

Under Section 138 of **U.P. Kshettra Samitis and Zila Parishads Act 1961** jurisdiction of the Civil Court in matter of taxation is barred. Section 138 (1) provides as under:-

"Bar of jurisdiction of Civil and Criminal Court in matters of Taxation – *(1) No objection shall be taken to a valuation or assessment nor shall the liability of a person to be assessed or taxed to be questioned in any other manner or by any other authority than as provided by or under this Act."*

Under Section 27(2) of the Act it is provided that any dispute regarding election of member of Zila Pandhayat under Section 80 or incurring disability by him under Section 20 or incurring disqualification by the Adhyaksha under Section 19 shall be referred in the manner prescribed to the judge whose decision shall be final and binding. Judge has been defined under section 2(24) which mean District Judge and includes any other subordinate Civil Judicial Officer named or designated by the District Judge in this behalf. Regarding challenge to election under Section 27 (2), U.P. Zila Panchayats (settlement of dispute relating to membership) Rules 1994 have been framed. Rule 4 provides for filing election petition. Similarly for challenging election of Adhyaksha and Up- Adhyaksha, U.P. Zila Pandhayats (Election of Adhyaksha and Up-Adhyaksha and Settlement of Election Disputes) Rules 1994 have been framed. Under Rule 33 election petition may be presented to the Judge. Third set of rules has

been framed by the name of U.P. Kshettria Panchayat (Election of Pramukh and Up-Pramukh and settlement of disputes) Rules 1994 have been framed. Under Rule 35 election petition may be filed before the judge.

Under Section 258 of the Act it has been provided that no Civil Court shall grant temporary injunction restraining any person from exercising the powers or performing functions or duties of a member, Adhyaksha, officer or servant of a Zila Panchayat or of a committee or sub-committee of a Zila Pandhayat on the ground that such person has not been duly elected, co-opted or appointed as such. Similar provision is there for Kshettra Panchayats under Clause (b) of the Section. Under Clause (c) of the Section it is provided that no temporary injunction may be issued restraining any person or Zila Panchayat or Kshettra Panchayat or Committee or Sub-committee from holding any election.

---

Under U.P. Panchayat Raj Act it is provided that question of disqualification under section 6 shall be decided by the Prescribed Authority and its decision subject to the result of any appeal shall be final. Under section 9(12) it is provided that no Civil Court shall have jurisdiction to entertain or adjudicate upon the question whether any person is or is not entitled to be registered in an electoral roll or regarding legality of any action taken by any officer or authority in respect of preparation and publication of electoral rolls. Under Section 13-BD if any person which is defined under sub-section (4) is guilty of an act or omission in breach of official duty, he may be punished with fine up to Rs. 500/- and under Sub-section (3) it is provided that no

suit or other proceedings shall lie against any other person for damages in respect of any such act or omission.

Under Section 12-C it is provided that election of Pradhan or Member of Gram Panchayat or Panch of Nayay Panchayat shall not be called in question except by an application to the Prescribed Authority. Under section 12-C (9) it is provided that decision of the Prescribed Authority subject to any order passed by the Revising Authority shall be final.

Provisions of Section 12-C have been made application to Sarpanch or Sahayak Sarpanch of Nayay Panchayat by virtue of Section 12-D.

Under section 12 –I it is provided as under:-

> "*No Civil Court shall have jurisdiction to question the legality of any action taken or any decision given by an officer or authority appointed under this Act in connection with the conduct of elections there under.*"

Under Sections 64 and 66 Nayay Panchayat may take cognizance of petty civil cases specified under Section 64 and not excluded under Section 66, if the value of the case does not exceed Rs. 100/-, however, under Section 64(2) State Government may by notification enhance the jurisdiction of any Nayay Panchayat of such civil cases of the value not exceeding Rs. 500/-.

## 18. Rent Control Acts

By virtue of Section 108 (q) T.P. Act "on the determination of the lease, the lessee is bound to put the lessor into possession of the property". If he does not do so, suit for eviction may be instituted against him. However, if the tenanted building is governed by Rent Control Act, the landlord cannot institute suit (or institute other proceedings) for eviction except on one of the grounds available to him under the relevant Rent Control Act. For enforcement of rights and liabilities created under such Acts proceedings may be taken only before the authorities created there under for such purpose e.g. for allotment and release of vacant building under Section 16 of U.P.R.C. Act before D.M. or his delegatee, for release against tenant on the ground of bonafide need under Section 21 of the Act before Prescribed Authority (Civil Judges). Under Rent Control Acts of some States even eviction proceedings on the grounds of default, subletting etc. are to be initiated before the authorities created under the said Acts and not before Civil Court. Under Section 20(1) of U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972 it is provided as under:-

> *"Save as provided in sub-section (2) no suit shall be instituted for the eviction of a tenant from a building notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner."*

Under sub-section (2) seven grounds are given on any of which suit for eviction may be instituted (before JSCC, see synopsis 6). The grounds include default, sub-letting etc.

Earlier the view of the Supreme Court was that if eviction order against tenant was passed on the basis of compromise, without there being any independent material on record regarding existence of some ground under the relevant Rent Control Act then the decree / order was nullity and could be successfully challenged by the tenant in execution even after enjoying the benefit of time to vacate granted under the compromise decree vide *Bahadur Singh v. Muni Subrat 1969 (2) SCR 432* (2 judges), *Ferozi Lal Jain v. Shri Man Mal AIR 1970 SC 794* (3 judges) and *Shrimati Kaushalya Devi v. Shri K.L. Bansal AIR 1970 SC 838* (3 judges). However in *K.K. Chari v. R.M. Seshodhri AIR 1973 SC 1311* and *Nagin Dass v. Dalpat Ram AIR 1974 SC 471* (both by three judges) the earlier three authorities were distinguished and it was held (particularly in Nagin Dass) that admissions in pleading stand on higher footing than evidentiary admissions and former, by themselves, can be made the foundation of the rights of the parties.

Accordingly even if, apart from compromise, there is no evidence on record and even if in the compromise nothing has been said regarding bonanfide need of the landlord or other ground e.g. default in payment of rent or subletting still if under compromise sometime to vacate is granted to the tenant and thereupon the tenant agrees that the eviction proceedings may be allowed, it is sufficient and such decree cannot be said to be nullity. This principle will apply to all the Rent Control Acts.

Same view has been taken in *H.M.L. Doshi v. B.R.L. Ranchhod Das AIR 1993 SC 1449* (2 judges) relying upon *K.K.Chari, Nagin Dass,* Supra, *Roshan Lal v. Madan Lal AIR 1975 SC 2130* (3 judges) and *Suleman Noormohamed v. Umarbhai Janubhai AIR 1978 SC 952* (2 judges). However, contrary view has been taken in *Sushil K. Mehta v. Gobind Ram*

*Bohra 1990 (1) SCC 193* (3 judges) without noticing *K.K. Chari* and *Nagin Dass,* supra. It is submitted that the view taken in *H.M.L. Doshi* and the authorities mentioned therein is correct view as the contrary authorities have not taken into consideration the legal position that admission of one party is best evidence of the other party and best proof of the facts admitted as per *Nagin Das 1974,* supra (see also Supreme Court on Rent Control by me)

## 19. Revenue (Agricultural Lands) laws

For 'jurisdiction of civil court vis-à-vis Revenue or Consolidation Court' in U.P. see the article by the same name by me published in Reading Material and separate brochure.

Section 46 of M.P. Ceiling on Agricultural Holdings Act 1960 bars the jurisdiction of civil court to settle, decide or deal with any question which is by or under the Act required to be settled decided or dealt with by the Competent Authority. Accordingly, decision of Competent Authority declaring certain land with a widow to be surplus cannot be challenged in a suit before civil court by her daughters on the ground that their mother had only one fourth share in the land. *Sooraj v. S.D.O., AIR 1995 SC 872*

Similar is the position under section 13(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960. Under sub-section (1) of Section 13 appeal is provided against orders of Prescribed Authority passed under Section 11(2) or 12 and under sub section (2) of Section 13 it is provided that decision on appeal 'shall be final and conclusive and be not questioned in any court of law.'

Sections 330, 331(1) and (1-A) and 331 A(1) of U.P. Z.A.L.R. Act are quoted below:-

> *"**330. Bar to jurisdiction of Civil Courts in certain matters**- Save as otherwise provided by or under this Act, no suit or other proceeding shall lie in any civil court in respect of-*
>
> *(a) Any entry in or omission from a Compansation Assessment Roll; or*

*(b) Any order passed under Part 1 of this Act; or*

*(c) The assessment or collection of land revenue under Chapter Xor recovery of any sum of money recoverable as arreas of land revenue.*

***331. Cognizance of suit, etc. under this Act****- (1) Except as provided by or under this act no court other than a court mentioned in Column 4 of the Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.*

*Provided that where a declaration has been made under Section 143 in respect of or any holding or part thereof, the provisions of Schedule II insofar as they relate to suits, applications or proceedings under Chapter VIII shall not apply such holding or part thereof.*

*(1-A) Notwithstanding anything in sub-section (i), an objection, that a court mentioned in Column 4 of Schedule II, or, as the case may be, a civil court, which had no jurisdiction with respect to the suit, application or, proceeding, exercised jurisdiction with respect thereto shall not be entertained by any appellate or revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.*

***331-A. Procedure when plea of land being used for agricultural purposes is raised in any suit.-*** *(1) If in any suit, relating to land held by a bhumidhar, instituted in any court, the question arises or is raised whether the land in question is or is not used for purposes connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming, and a declaration has not been made in respect of such land under Section 143 or 144, the court shall frame an issue on the question and send the record to the assistant Collector in – charge of the sub-division for the decision of that issue only:*

*Provided that where the suit has been instituted in the court of Assistant Collector in – charge of the sub-division, it shall proceed to decide the question in accordance with the provisions of Section 143 or 144, as the case may be.*

By virtue of schedule II most of the suits relating to agricultural land are cognizable by revenue court and not civil court e.g. suit for possession, declaration or partition.

By virtue of Rule 285- K of the Rules framed under U.P.Z.A.L.R. Act, for setting aside sale of property in realization of land revenue or other dues recoverable like such arrears, on the ground of fraud suit before Civil Court may be instituted.

*"Rule 285-K. If no application under Rule 215-I is made within the time allowed therefor, all claims on the ground of irregularity or mistake in publishing or conducting the sale shall be barred.;*

*Provided that nothing contained in this rule shall bar the institution of a suit in the Civil Court for the purpose of setting aside a sale on the ground of fraud."*

Sections 207 and 233 of U.P. Land Revenue Act 1901 are quoted below:

*"207.* ***Bar to appeal and suit in Civil Court****- Such decision shall be at once carried out and shall not be open to appeal unless the decision is in excess of, or not in accordance with, the award or unless the decision is impugned on the ground that there is no valid award in law, or in fact;*

*And no person shall institute any suit in the Civil Court for the purpose of setting it aside or against the arbitrators on account of their award.*

***233. Matters excepted from cognizance of Civil Court****- No person shall institute any suit or other proceeding in the Civil court with respect to any of the following matters:*

*(a) The arrangement of Lekhpals (halkas)*

*(b) Claims by any person to any of the offices mentioned in (sections 23 and 25), or to any emolument or fees appertaining such office, or in respect of any injury caused by his exclusion therefrom, or claims by any person to nominate person to such offices;*

*(c)* ……deleted by UPZALR Act

*(d) The formation of the record-of-rights or the preparation, signing, or attestation of any of the*

*documents contained therein, or the preparation of the annual registers;*

*(e) to (m)…… omitted by U.P. ZALR Act.*

Orders of mutation of name in revenue records/ annual registers (Khasra, Khtauni), corrections therein under Sections 33, 35, 39 and 40 or order of settlement of boundary dispute under section 41 or for correction of map under Section 54 of U.P. Land Revenue Act are subject to a suit in a competent court (mostly revenue court), by virtue of its section 40-A, quoted below:-

*"40-A. Saving as to title suits: - No order passed under section 33, section 35, section 39, section 40, section 41 or section 54 shall bar any suit in a competent court for relief on the basis of a right in a holding."*

## MISCELLANEOUS

I. Article 131 of Constitution of India
II. Bihar Reorganization Act
III. Civil Court vis-à-vis Criminal Court
IV. Companies Act 1956
V. Co-operative Societies
VI. Damages for Malicious Prosecution
VII. Declaration regarding membership of Scheduled Caste or Tribe
VIII. E.S.I. Act
IX. Election of M.P., M.L.A.
X. Electricity Act
XI. E.P.F. Act
XII. Evacuee Property
XIII. Family Courts
XIV. Land Acquisition
XV. Law of the Foreign Country
XVI. Motor Vehicles Act
XVII. Partnership Act
XVIII. Payment of Wages Act
XIX. Public Premises (Eviction of Unauthorized Occupants) Acts
XX. Railways Act
XXI. Religious Matters
XXII. Sick Industrial Companies (Special Provisions) Act 1986
XXIII. Societies Registration Act
XXIV. Sovereign Immunity
XXV. Suit maintainable in spite of bar
XXVI. Workmen's Compensation and Employees' Compensation Acts

## MISCELLANEOUS

I. Articles 131 and 363 of Constitution of India:

Civil Court or no other court except Supreme Court has got jurisdiction to decide the dispute between two States or Government of India and a State in view of Article 131of the Constitution, infra:

> ***131***. *Original jurisdiction of the Supreme Court.- Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute*
>
> *(a) between the Government of India and one or more States; or*
>
> *(b) between the Government of India and any State or States on one side and one or more other States on the other; or*
>
> *(c) between two or more States,*
>
> *if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:*
>
> *Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagements, and or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute*

In respect of treaties, covenants etc. even Supreme Court has got no jurisdiction in view of Article 363, infra:-

> ***363.*** *Bar to interference by courts in disputes arising out of certain treaties, agreements, etc :- (1) Notwithstanding anything in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant,*

*engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument*

*(2) In this article*

*(a) Indian State means any territory recognized before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and*

*(b) Ruler includes the Prince, Chief or other person recognized before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State"*

In original suit no. 3 of 2006, *State of Tamil Nadu v. State of Kerala, AIR 2014 SC 2407* (CB) it has been held that there is similarity of provision in Article 363 and proviso to Article 131 and by virtue of the same Supreme Court cannot decide matters of political settlement.

In *State of Madhya Pradesh v. Maharani Usha Devi, AIR 2015 SC 2699* after placing reliance upon *Karan Singh v. State of J. and K., AIR 2004 SC 2480* and *Draupadi Devi v. Union of India, AIR 2004 SC 4684* and two other cases, the Supreme court held that if in any covenant between the Government and any Ruler of an Indian State some property was recognized as private property of the Ruler then any dispute in relation thereto cannot be agitated in any court not even the Supreme Court.

**II.** Bihar Reorganization Act

Some dismissed employees of Bihar State Electricity Board, who were working in district Hazari Bagh, instituted a suit against their dismissal from service before Munsif Patna which was decreed in 1981. First appeal filed against the decree was dismissed by ADJ Patna in 2006 and Second Appeal was dismissed in 2008 by Patna High Court. However, in 2000 Bihar Reorganization Act had been passed and district Hazari Bagh had fallen in newly created state of Jharkhand. The Supreme Court (in *Bihar Electricity Board v. Ram Deo Prasad Singh, AIR 2011 SC 3423)* held that in view of Section 89 of Bihar Reorganization Act the appeal should have been transferred by ADJ to the corresponding court in Jharkhand State. In para 9 it was held as follows:

> "**9.** *In light of the above, it must be held that the judgment passed by the first appellate court was illegal and without jurisdiction and equally without jurisdiction is the judgment and order passed by the Patna High Court."*

III. Civil Court vis-à-vis Criminal Court

By virtue of sub-section (2) of section 133 Cr.P.C. (Conditional order for removal of nuisance), preliminary order passed under sub-section (1) thereof shall not be called in question in any Civil Court. However, if pursuant to preliminary order and show cause notice the person concerned denies existence of public right and adduces reliable evidence in respect thereto then the matter is to be decided by Civil Court as per section 137 (2), quoted below

*"Section 137 (2): If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent court; and if he finds that there is no such evidence he shall proceed as laid down in section 138."*

In case magistrate makes the preliminary order absolute then the procedure to be followed is provided under Section 141 and sub section (3) thereof provides as under.

"141(3): *No suit shall lie in respect of anything done in good faith under this section."*

Similar provision is there under section 142 (3) which deals with injunction pending inquiry.

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Sections 145 and 146 Cr.P.C. deal with temporary arrangement including attachment of immovable property in case of such dispute regarding thereto, which is likely to cause a breach of the peace. The attachment order whether preliminary or final is subject to order of Civil court whether interim or final, by virtue of section 146 which is quoted below:-

*146. Power to attach subject of dispute and to appoint receiver: (1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:*

*Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any like hood of breach of the peace with regard to the subject of dispute.*

*(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any civil court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):*

*Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any civil court, the Magistrate-*

*(a) Shall order the receiver appointed by him to hand over the possession of the subject of the dispute to the receiver appointed by the Civil court and shall thereafter discharge the receiver appointed by him;*

*(b) May make such other incidental or consequential orders as may be just."*

The efforts made and orders passed by magistrate under Sections 145 and 146 are temporary in nature to remain in operation until competent court (mainly Civil Court) decides rights *Bhinka v. Charan Singh AIR 1959 SC 960* and *R. H. Bhutani v. Man. J. Desai AIR 1968 SC 1444.* In the latter authority it has also been held that under section 145 proceedings may be initiated either on police report or upon other material but when there is no police report magistrate should proceed with great caution. Competent Court need not be Civil Court *Shanti Kumar Panda v. Shakuntala Devi AIR 2004 SC115.* In respect of agricultural land Competent Court may be Revenue Court or Consolidation Court. In landlord tenant disputes Rent Controller may be

competent Court vide *Surinder Pal Kaur v. Satpal, AIR 2015 SC 2739* placing reliance on *S.K. Panda,* para 12 (of *S.P. Kaur*) is quoted below:-

> *"**12**. In Shanti Kumar Panda v. Shakuntala Devi, 2004(2) R.C.R.(Criminal) 881 : (2004)1 SCC 438, this Court has held, in paragraph 15, that the reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court (except for the limited purposes enumerated above). Also, it was further held in said case that the words "competent court" as used in sub-section (1) of Section 146 of the Code do not necessarily mean a civil court only. A competent court is one which has the jurisdictional competence to determine the question of title or the rights of the parties with regard to the entitlement as to possession over the property forming the subject-matter of proceedings before the Executive Magistrate."*

The Civil Court can decide title, possession or better right to possession and findings of criminal court regarding possession are not binding on Civil Court. *Jhummamal alias Devandas v. State of Madhya Pradesh AIR 1988 SC 1973.* Such findings are not even admissible vide *S.K. Panda*, supra

Special Acts like Maharashtra Vacant Lands (Prohibition of Unauthorized Occupation and Summary Eviction) Act 1975 do not bar proceedings under Section 145 Cr.P.C. *Chandu Naik v. Sitaram B. Naik, AIR 1978 SC 333.*

In *S.K. Panda*, supra, it has also been held that after attachment of the property by the Magistrate under section 146 Cr.P.C. the property is

held *custodia legis* for and on behalf of the party who would ultimately succeed from the Competent Court, and it will be sufficient if only declaration regarding right with regard to the entitlement to possession is sought in the suit. Such a suit will not be bad for not asking for relief of possession by virtue of proviso to Section 34 Specific Relief Act as in such situation relief of possession cannot be sought or if sought would be redundant. Same view has been taken in *Deo Kuer v. S.P.Singh AIR 1966 SC 359.* In *Prakash Chand Sachdeva v. State AIR 1994 SC 1436* it has been held that proceedings under Section 145 Cr.P.C. need not necessarily be dropped either on the ground that proceedings under section 107 Cr.P.C. have been dropped or on the ground that suit for injunction is pending when suit is not based on title but only raises the dispute of dispossession of a co-owner by another co-owner.

Apart from the decision by competent court, withdrawal of attachment of property is also permissible when Magistrate is satisfied that the likelihood of breach of peace has ceased to exist, *Dharampal v. Ramshri AIR 1993 SC 1361* and *Mathuralal v. Bhanwar Lal AIR 1980 SC 42.*

The words 'until evicted there from in due course of law', occurring in Section 145 (6)(a) do not mean decree of eviction passed by civil court and dispossession in execution thereof. Either a declaratory decree or even a prima facie adjudication while deciding temporary injunction application in favour of a party by civil court is sufficient to entitle that party to take possession either from superdar or even the other party who was 'found' to be in possession by magistrate *Shanti Kumar Panda, 2004,* supra. In this authority it has also been held that competent court need not be civil court.

In *Ram Sumer v. State of U.P. AIR 1985 SC 472* it has been held in para 2 as follows:-

> *"Para 2: When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of decree of the Civil Court, the criminal Court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the Civil Court and parties are in a position to approach the civil court for interim orders such an injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation."*

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Under Section 456 Cr.P.C. in case of conviction for forcible dispossessing someone from an immovable property, the Court is entitled to direct redelivery of possession to the person so dispossessed. Under sub section (4) it is provided as under:-

> *"456(4): No order made under this section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit."*

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Title to stolen goods, if disputed, will have to be decided by civil court and not by the criminal court passing conviction order. *T.S. Teli v. state of Karnataka, 2005 (12) SCC 171.*

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Simultaneous civil and criminal proceedings are not prohibited in every case. However, in some cases civil proceedings may be stayed, *M.S. Sheriff v. state of Madras AIR 1954 SC 397* (C.B.). If in civil suit defendant has filed written statement then he cannot seek stay of suit on the ground of pendency of criminal case on the same facts and allegations. The reason is that civil proceedings are stayed on the ground that therein the defendant / accused would be required to disclose his defence which might prejudice criminal trial, however by filing written statement defence already stands disclosed, *Guru Granth Sahib Sthan v. Ved Prakash AIR 2013 SC 2024.* In this authority it has also been held that if suit is decided earlier, the judgment will be relevant for the criminal case but not conclusive. For this proposition reliance was placed upon *K.G. Premshanker v. Inspector of Police AIR 2002 SC 3372.* In *K. Nanjappa v. R.A. Hameed AIR 2015 SC 3389* (para 29) it has been held as follows:-

> *".....In our considered opinion the evidence and the finding recorded by the criminal courts in a criminal proceeding cannot be the conclusive proof of existence of any fact, particularly, the existence of agreement to grant a decree for specific performance without independent finding recorded by the Civil Court."*

IV. <u>Companies Act 1956</u>

In *Dwarka Prasad Agarwal v. R.C.Agarwal, AIR 2003 SC 2697* (paras 18 to 25) after quoting sections 9 and 10 of Companies Act it has been held that suits before civil court against alleged illegal dispossession of one party by the other from company premises (printing press) and for injunction and possession in respect thereof are maintainable. Following observation of Delhi High Court was quoted with approval in earlier part of para 24, infra:-

> *Yet again in Maharaja Exports and another v . Apparels Exports promotinal Council, (1986 (60) CC 353) the Delhi High Court held:-*
>
> *"Under Section 9 of the Civil Procedure Code, 1908, civil Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is expressly or impliedly barred. Unlike some statutes, the Companies Act does not contain any express provision barring the jurisdiction of the ordinary civil Courts in matters covered by the provisions of the Act. In certain cases like winding-up of companies, the jurisdiction of civil Courts is impliedly barred.*
>
> *Where a person objects to the election of Directors and claims a decree for declaration that he was one of the Directors, there is no provision which bars the civil Court, either expressly or by implication, from trying such a suit."*

In *Nazir Hoosein v. D. Bhattena AIR 2000 SC* 2327 maintainability of suit challenging resolution of meeting of Board of Directors of a company (Indian Automotives Racing Club) was not doubted.

V. <u>Co-operative Societies:</u>

Under Section 70 of U.P. Co-operative Societies Act 1965 it is provided that any dispute relating to the constitution, management or the business of a co-operative society among members, their representatives, between member or employee and society or between two co-operative societies etc. shall be referred to the Registrar (who in turn shall refer the

same for arbitration under Section 71) and no court shall have jurisdiction to entertain any suit in respect of such dispute. (Both the sections are quoted in the Appendix A) Two types of disputes are excepted, one is regarding disciplinary action taken against a paid servant of a society and the other is election dispute until declaration of result. Under sub-section (2) certain disputes are declared to be disputes relating to the constitution, management or the business of a co-operative society.

In Cooperative Societies Acts of other States also similar provision is there. In some societies instead of the words "relating to", word "touching" has been used. However, both mean the same thing, whether the dispute touches the constitution etc. or is related to the same is covered by the provision of arbitration. In the Acts of other States some further disputes have been excepted from the provision of arbitration.

Under Section 102 of U.P. Co-operative Societies Act it is provided that every award made under Section 71 (pursuant to reference under Section70) and every order of the appellate court under Sections 97 and 98 shall not be questioned in any court (section 102 quoted in appendix A)

The leading authority explaining the words "business of a Co-operative society" occurring in Section 91 of Maharashtra Cooperative Societies Act is reported in *D.M. Co-operative Bank v. Dali Chand AIR 1969 SC 1320.* It has been held therein that the words must be interpreted in a narrower sense. In the said case the dispute was between a Co-operative society and its tenant in one of its buildings. It was held that as to construct buildings or to let out the same to its members was not the business of the society in question, hence, the matter was not referable to arbitration. Under the Maharashtra Co-operative Societies Act

the words used are “touching the business”. It was further held that the word ‘touching’ is very wide, however, touching the business of the society does not mean touching the assets of the society as business does not mean incidental activity which may involve monetary aspect.

It was further held that Bombay Rent Control Act 1947 would prevail upon the Co-operative Societies Act, hence, no reference could be made for eviction of the tenant of the co-operative society and eviction could be sought only through suit before JSCC. In para 32 it was mentioned that same would be the position in other States. In respect of tenants / licensees of Co-operative Societies in Maharashtra same view has been taken in *Sanwarmal Kejriwal v. Vishwa Co-operative Housing Society Ltd., AIR 1990 SC 1563* and following the said authority in *Narendra K. Kochar v. Sind Maharashtra Coop. Housing Society Ltd., AIR 2002 SC 2507.* In the last case three earlier decisions of the Supreme Court (*AIR 1982 SC 1097 O.N. Bhatnagar v. Rukibai Naraindas, AIR 1989 SC 81 A.V.R. and Co. v. Fairfield Co-operative Housing Society Ltd., and AIR 1998 SC 1998 Electrical Cable Dev. Assoc. v. Arun Comm. Premises Coop. Hous. Soct. Ltd.,*) were distinguished on the ground that in those cases licenses had been granted after 1.2.1973, hence, under Bombay Rent Control Act 1947 licensees did not become tenants.

The authority of *D.M. Co-operative Bank 1969,* supra has been relied upon in almost all the subsequent authorities on the point. The latest being *Dhanushali Housing Co-operative Society v. Mangilal AIR 2015 SC 3016* (3 judges).

In *Goa Central Co-operative Consumers v. M/s. B.N. Tendulkar, AIR 1999 SC 846* it has been held that dispute between a co-operative society

and non-member arising out of hire purchase agreement is not covered by Section 91 of the Maharashtra Co-operative Societies Act.

In *Ramesh C Ardawdtiya v. Anil Panjwani AIR 2003 SC 2508* under Rajasthan Co-operative Societies Act 1965 it has been held that suit by member allottee of plot or by his vendee against trespasser who is not a member of the society is not barred by Section 75 of the Act, which is *pari materia* with section 70 of the U.P. Act.

In *Dhanushali Housing 2015,* supra, under Madhya Pradesh Co-operative Societies Act 1961 it has been held that if the object of the society is to purchase land for development and allotment of house sites to its members then purchase of land by the society from a private person for the said purposes is a transaction touching the business of the society and if a dispute arises out of such transaction then it is referable to arbitration under Section 64 which is pari materia with Section 70 of U.P. Act. However, under Section 64 of M.P. Co-operative Societies Act it is provided that a dispute between a non member with whom the society has or had business transactions and the society is referable to arbitration. The Supreme Court held that a single instance of sale by a private person does not constitute business transaction on the part of both the parties, hence, dispute could not be referred to arbitration.

Under section 69(2) (d) of Kerala Co-oprative Societies Act certain disputes are enumerated which may also be referred to arbitration including the following:

section 69(2) (d) any dispute arising in connection with employment of officers and servants of the different classes of societies specified in

sub-section (1) of Section 80, including their promotion and inter se seniority.

Supreme Court in *Akalakunnam Village Service Co-op. Bank Ltd. v. Binu N. AIR 2015 SC 1115* has held that challenge to notification inviting applications for appointment, selection and appointment on the ground of flouting building guidelines issued by the Registrar of Co-operative Societies is not covered by the section 69 hence it is not referable and writ petition was rightly entertained and allowed by the High Court.

VI. Damages for Malicious Prosecution

Suit for damages for malicious prosecution on the ground that temporary injunction in the earlier suit instituted by the defendant was wrongly obtained is maintainable. In this regard Section 95 C.P.C. which provides that in such situation, in that very suit, defendant may, on his application, be awarded compensation of a maximum amount of Rs. 50,000/- (prior to 1999-2002 amendment it was only one thousand) is no bar to fresh suit for compensation by the defendant and in such suit the maximum limit of damages prescribed under Section 95 also does not apply *Bank of India v. L. Dass AIR 2000 SC 1172.*

VII. Declaration regarding membership of Scheduled Caste or Tribe:

In *State of Tamil Nadu v. A. Gurusamy AIR 1997 SC 1199* it has been held that civil court has got no jurisdiction to declare that a person (plaintiff) is member of a particular Schedule Tribe (or caste).

VIII. E.S.I. Act

Under Section 75 (3) of Employees'_State Insurance Act 1948 "*no Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by a medical board or by a medical appeal tribunal or by the Employees' Insurance Court*" (Constituted under section 74). However under Section 78 (4) it is provided that "*an order of the E.S.I. Court shall be enforceable as if it were a decree passed in a suit by a Civil Court.*"

It has been held in *Kishori Lal v. Chairman ESI Corporation AIR 2007 SC 1819* (3 judges) that the above section does not bar the jurisdiction of the forum under Consumer Protection Act. Latter part of plara 20 is quoted below:

> *"Further, it can be seen that any claim arising out of and within the purview of the Employees' Insurance Court is expressly barred by virtue of sub- section (3) to be adjudicated upon by a civil court, but there is no such express bar for the consumer forum to exercise the jurisdiction even if the subject matter of the claim or dispute falls within clauses (a) to (g) of sub-section (1) of Section 75 or where the jurisdiction to adjudicate upon the claim is vested with the Employees' Insurance Court under clauses (a) to (f) of sub-section (2) of Section 75 if it is a consumer's dispute falling under the CP Act."*

In the same authority it has further been held that even civil suit is not barred if damages are claimed for the negligence of the doctor in the ESI hospital/dispensary. Para 19 is quoted below:

*"19. A bare perusal of the provisions of clauses (a) to (g) of Section 75(1) clearly shows that it does not include claim for damages for medical negligence, like the present case which we are dealing with. Although the question does not directly arise before us, we shall consider what in the ordinary course shall constitute negligence."*

Sections 53 and 61 of ESI Act bar the jurisdiction of any other court or authority to entertain a claim for compensation etc. Both the sections are quoted below:-

**"**53. Bar against receiving or recovery of compensation or damages under any other law.—*An insured person or his dependants shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 (8 of 1923) or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act.*

61. Bar of benefits under other enactments.—*When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment."*

In *A. Trehan v. M/s Associated Electrical Agencies AIR 1996 SC 1990* it was held that the above sections barred the applicability of Workmen's Compensation Act 1923 and an employee insured under ESI Act 1948 could not claim compensation under 1923 Act. This authority has been followed in *Dhropadabai v. M/s Technocraft Toolings AIR 2015 SC 2307.* In both the cases applicants were receiving

compensation under ESI Act, for injury and death still they had filed applications under Workmen's Compensation Act. The applications were held to be not maintainable.

In *Western India Plywood Ltd. v. P. Ashokan, AIR 1997 SC 3883* it has been held that Section 53 prohibits the injured person who is insured employee from claiming compensation under any other law including Tort, hence, suit is not maintainable (in the said case after receiving benefit under ESI Act the injured employee had sought to institute the suit for damages). However, the question as to whether an insured person can raise a claim against the third party in the event of his suffering an employment injury was kept open and not decided therein.

The bar under Section 53 is absolute as held in *National Insurance Co. Ltd. v. Hamida Khatoon, AIR 2009 SC 2599.*

IX. Election of M.P., M.L.A.,

Under Representation of People Act 1951election of M.P. or M.L.A. can be challenged only before the High court and it is provided under Section 70 of the Act as follows:-

> *"No civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election."*

X. Electricity Act:

Under Section 126 of Electricity Act 2003 assessing officer is required to assess electricity charges payable in case of unauthorized use of electricity. Against his final order appeal is provided under Section 127. Thereafter, under Section 145 it is provided as under:

> "145. Civil court not to have jurisdiction- *No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

Interpreting Section 52 of old/repealed Electricity Act of 1910 it was then that suit for damages against Electricity Board for laying higher power transmission lines over the property/ construction of the plaintiff without his consent is maintainable before the Civil Court as no provision of the Act barred the same vide *M.P. Electricity Board Jabalpur v. M/s Vijaya Timber Co. AIR 1997 SC 2364.*

XI. <u>E.P.F.Act.</u>

Under Section 7L (4) of Employees' Provident Funds and Misc. Provisions Act 1952 any order made by a Tribunal (appellate tribunal) finally disposing of an appeal shall not be questioned in any court of law.

XII. <u>Evacuee Property</u>

Administration of Evacuee Property Act 1950 (since repealed in 2005) was a complete code in itself. Under Section 7 custodian had to determine as to whether a particular person had or had not become evacuee and whether property in dispute belonged to him. By virtue of Section 46 Civil or Revenue Court could not decide any question which was to be decided by custodian. Accordingly the jurisdiction of Civil Court to decide both the above questions or any one of them was held to be barred, vide *Custodian Evacuee Property Punjab v. Jafran Begum AIR 1968 SC 169*.

XIII. Land Acquisition

Civil Court has got no jurisdiction to decide the validity or legality of Sections 4 and 6 notifications of Land Acquisition Act, 1894 through which land is acquired, vide *Shri Girish Vyas v. State of Maharastra AIR 2012 SC 2043* (para 98) placing reliance upon *State of Bihar v. Dhirendra Kumar AIR 1995 SC 1955.* Similar view has been taken in *Laxmi Chand v. Gram Panchayat, Kararia, AIR 1996 SC 523.* Similar will be the position in respect of corresponding sections of new land acquisition Act i.e. Sections 11, 12 and 19 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

XIV. Family Courts:

The Family Courts Act 1984 confers jurisdiction upon a family court in respect of matrimonial disputes defined under Explanation to Section 7(1) Explanation to Section 7(1) and sub section (2) of Section 7 are quoted below:-

*"Section 7 (1).....*

*Explanation: The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely,-*

*(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;*

*(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;*

*(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;*

*(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;*

*(e) a suit or proceeding for a declaration as to the legitimacy of any person;*

*(f) a suit or proceeding for maintenance;*

*(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.*

*(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-*

*(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and*

*(b) such other jurisdiction as may be conferred on it by any other enactment."*

Section 8 (a) and (b) quoted below excludes the jurisdiction of District court or any subordinate Civil Court in respect of matrimonial matters.

*8. Exclusion of jurisdiction and pending proceedings-Where a Family Court has been established for any area,-*

*(a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to that sub-section;*

*(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);*

Suit relating to property of divorced spouses is maintainable before Family Court *K.A. Abdul Jaleel v. T.A. Shahida, AIR 2003 SC 2525.*

XV. Law of the Foreign Country

If cause of action arises partly in India and partly in a foreign country (Hong Kong) and the agreement between the parties provides that law of the foreign country shall apply then suit may be filed in India but the Indian Court will have to apply the law of the foreign country. Agreement that law of a foreign country shall apply does not mean that through agreement jurisdiction to decide disputes has exclusively been

conferred upon the courts of the foreign country vide *Laxman Prasad v. Prodigy Electronics AIR 2008 SC 685.*

XVI. Motor Vehicles Act

Claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles or damages to any property of a third party so arising may be instituted before Claims Tribunal constituted under Motor Vehicles Act 1988, by virtue of Sections 165 and 166 thereof.

By virtue of section 167 if in respect of an accident compensation may be claimed either under the Act (M.V. Act) or under Workmen's Compensation Act 1923 then it may be claimed under either of those Acts but not under both.

Section 175 of the Act provides as under:

> *"Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area and no injunction in respect of any action taken or to be taken by or before the claims tribunal in respect of claim for compensation shall be granted by the Civil Court."*

XVII. Partnership Act

Section 69 of Partnership Act 1932, quoted below, bars certain suits by or against unregistered firms:

> *"*69. Effect of non-registration.*-(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in*

*any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.*

*(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms or partners in the firm.*

*(3) The provisions of sub-section (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect-*

*(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm, or*

*(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realize the property of an insolvent partner.*

*(4) This section shall not apply*

*(c) to firms or partners in firm which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under section 56 this Chapter does not apply, or*

*(d) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the presidency towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882, or outside the Presidency towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.*

XVIII. Payment of Wages Act

Under Section 15 of Payment of Wages Act 1936 claims arising out of the deduction from the wages or delay in payment of wages are to be made before the authority constituted for the said purpose under the said Section. Section 22 of the Act provides that no court shall entertain any suit for the recovery of wages or of any deduction from wages. Section 22 is quoted below:-

*"*22. Bar of Suits*: No Court shall entertain any suit for the recovery of wages or of any deduction from wages insofar as the sum so claimed:-*

*(a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or*

*(b) has formed the subject of a direction under section 15 in favour of the plaintiff; or*

*(c) has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff; or*

*(d) could have been recovered by an application under section 15.*

However the Act applies only to the payment of wages to persons employed in any factory or railways or in the industrial or other establishments as defined under Section 2(ii). The further restriction regarding applicability of the Act is that the wages shall be less than Rs. 18000/- per month. (Section 1(6) and notification of Central Government S.O. No. 2260 (E), dated 11/20 Sept., 2012).

XIX. Public Premises (Eviction of Unauthorized Occupants) Acts.

Under Sections 10 and 15 of Public Premises (Eviction Of Unauthorized Occupants) Act, 1971, it is provided as under:-

10. Finality of orders—*Save as otherwise expressly provided in this Act, every order made by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*

15. Bar of jurisdiction- *No Court shall have jurisdiction to entertain any suit or proceeding in respect of –*

*(a) the eviction of any person who is in unauthorized accupation of any public premises, or*

*(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under Section 5-A, or*

*(c) the demolition of any building or other structure made, or ordered to be made, under Section 5-B, or*

*(cc) the sealing of any erection or work or of any public premises under Section 5-C, or*

*(d) the arrears of rent payable under sub-section (1) of Section 7 or damages payable under sub-section (2), or interest payable under sub-section (2-A), of that section, or*

*(e) recovery of-*

*(a) costs of removal of any building, structure or fixture or goods, cattle or other animal under Section 5-A, or*

*(b) expenses of demolition under section 5-B, or*

*(c) costs awarded to the Central Government or statutory authority under sub-section (5) of Section 9, or*

*(d) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the central Government or the statutory authority.*

Similarly sections 10 and 15 of U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 provide as follows:-

"10. Finality of orders- *Save as otherwise expressly provided in this Act, every order made by a prescribed authority or appellate officer under this act shall be final and shall not be called in*

*question in any original suit, application or execution proceeding and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*

*15.* Bar of jurisdiction- *No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorized occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of Section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government or the corporate authority under sub-section (5) of section 9 or any portion of such rent, damages or costs."*

In respect of Government accommodation situate at Lucknow and allotted to some N.G.O., political party, society, trust, trade union, employees union etc. U.P. Public Premises (Eviction of certain Unauthorized Occupants) Act 2010 has been enacted. Under Section 9 of the Act it is provided:-

*"No court shall have jurisdiction to entertain any suit or proceedings in respect of eviction of any person who is in unauthorized occupation of any public premises or recovery of rent or damages."*

XX. Railways Act

Section 80 of Railways Act 1890 provides that suit for compensation for loss of the life of, or personal injury to, a passenger or for loss, destruction, damage, deterioration or non-delivery of animals or goods may be instituted in a court having jurisdiction over

the place at which the passenger obtained his pass or purchased his ticket or the animals or goods were delivered for carriage, as the case may be, or over the place in which the destination station lies or the loss, injury, destruction, damage or deterioration occurred. The Supreme Court in *Ratan Lal Adukia v. U.O.I., AIR 1990 SC 104: 1989 (3) SCC 537* has held that this section is a complete code regarding place of suing and operation of section 20 C.P.C. and section 18 of Presidency Small Causes Act stands excluded.

XXI. Religious Matters:

In *Ugam Singh v. Kesrimal AIR 1971 SC 2540* it has been held that "*it is clear therefore that a right to worship is a civil right, interference with which raises a dispute of a civil nature".*

In *P.M.A. Metropolitan v. M.M. Marthoma AIR 1995 SC 2001* it has been held that ex-communication by a Christian religious authority can be challenged through suit. In this authority, in the judgment by justice R.M. Sahai, the aspect of maintainability of suit in religious matters has been thoroughly examined in paras 27 to 35 and reference has also been made to Article 25 of the Constitution which guarantees freedom of conscience and the right freely to profess practice and propagate religion to every person.

XXII. Sick Industrial Companies (Special Provisions) Act 1986:

In *Ghanshyam Sarda v. M/s S.S. Trading Co. AIR 2015 SC 403* it has been held that by virtue of sections 22 and 26 of the Act only Board for Industrial and Financial Reconstruction (BIFR) has got the jurisdiction to decide whether the company continues to be sick or not and civil court

has no jurisdiction to decide this question and grant declaration in that regard.

XXIII. Societies Registration Act

Against the orders passed by the Prescribed Authority under Section 25 of Societies Registration Act 1860 as added by U.P. pertaining to disputes regarding election of office bearers suit is maintainable vide *Mahadeo Singh v. Up Ziladhikari / P.A. 2015 (110) ALR 430* (Allahabad High Court)

XXIV. Sovereign Immunity:

In olden days defence of immunity of State for its sovereign acts was readily raised and accepted by courts in suits for torts (particularly damages for negligence). However such defence was never available in public law remedies i.e. writ petitions. With the passage of time the defence is no more so readily available in suits. In *State of Andhra Pradesh v. C.R. Reddy AIR 2000 SC 2083* a suit for damages for death of an under trial in jail by an out side mob, due to negligence of concerned police / jail authorities, was held to be maintainable and defence of immunity was rejected. Paras 29 to 32 are quoted in the Appendix B.

XXV. Suit maintainable in spite of bar:

Delhi Municipal Corporation Act bars suit against notice, order or action of sealing or demolishing of building and provides internal remedies against the same. In *Shiv Kumar Chadha v. Municipal Corporation of Delhi 1993 (3) SC C 161,* after discussing 23 authorities, it has been held that Civil court will still have jurisdiction to entertain

suit if the plea is that the building is not within the limits of the Corporation or that the constructions were made before coming into force the relevant provisions of the Act as in such situation order is nullity in the eye of law because of jurisdictional error.

XXVI. Workmen's Compensation and Employees' Compensation Acts:-

Section 3(5) of Workmen's Compensation Act 1923 is quoted below:-

***"S. 3 (5).*** *Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any court of law in respect of any injury:*

*(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or*

*(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act."*

## *APPENDIX –A*

## *C.P.C*

***"9: Courts to try all civil suits unless barred**: The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*

*Explanation I.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.*

*Explanation II: For the purposes of this section, 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.*

***15. Court in which suits to be instituted:** Every suit shall be instituted in the Court of the lowest grade competent to try it.*

***16.Suits to be instituted where subject matter situate.-** Subject to the pecuniary or other limitations prescribed by any law, suits-*

*(c) for the recovery of immovable property with or without rent or profit,*

*(d) for the partition of immovable property,*

*(e) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,*

*(f) for the determination of any other right to or interest in immovable property,*

*(g) for compensation for wrong to immovable property,*

*(h) for the recovery of movable property actually under distrait or attachment,*

*shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:*

***Provided** that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.*

***Explanation.—**In this section "property" means property situate in India.*

***17. Suits for immovable property situate within jurisdiction of different Courts:*** *Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Court, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:*

*Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court.*

***18. Place of institution of suit where local limits of jurisdiction of courts are uncertain.-*** *(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more courts any immovable property is situate, any one of those courts, may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and there upon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:*

*Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.*

*(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an Appellate or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the court having jurisdiction with respect thereto and there has been a consequent failure of justice.*

***19.Suits for compensation for wrongs to person or movables.-*** *Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business or personally works for gain, within*

*the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.*

***20. Other suits to be instituted where defendants reside or cause of action arises.-****Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—*

*(f) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or*

*(g) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or*

*(h) the cause of action, wholly or in part, arises.*

***Explanation —****A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.*

***21.Objections to jurisdiction.-*** *(1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues*

*are settled at or before such settlement, and unless there has been a consequent failure of justice.*

*(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.*

*(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.*

(Sub- Sections (2) and (3) have been added in 1976-77.)

***21-A. Bar on suit to set aside decree on objection as to place of suing:-*** *No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing."*

*Explanation: The expression "former suit" means a suit which has been decided prior to the decision in the suit in which the validity of the decree is questioned, whether or not the previously decided suit was instituted prior to the suit in which the validity of such decree is questioned.*

(Section 21-A added in 1976-77)

*"**Section 47(1)** All questions arising between the parties to the suit in which the decree was passed or their representative and relating to the execution discharge or satisfaction of the decree shall be determined by the Court executing the decree and **not by a separate suit.**"*

*(2) …….omitted in 1976-77*

*(3) Where A question arises as to whether any person is or is not the r3epresentative of a party, such question shall, for the purposes of this section, be determined by the Court.*

*Explanation I.- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.*

*Explanation II- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and*

*b. All questions relating to the delivery of possession of such plroperty to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.*

"***O.2, R.2: "Suit to include the whole claim.**- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may*

*relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*

*(2)* Relinquishment of part of claim.- *Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim,* ***he shall not afterwards sue*** *in respect of the portion so omitted or relinquished.*

*(3)* Omission to sue for one of several reliefs.-*A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs,* ***he shall not afterwards sue*** *for any relief so omitted.*

Explanation – *For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.*

*Illustration: A lets a house to B at a yearly rent of Rs. 1200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.*

***Uttar Pradesh.****— In Order II, Rule 2.—*

(a) *the existing Explanation shall be numbered as Explanation I, and after Explanation I, as so numbered the following Explanation II shall be inserted, namely:—*

*"Explanation II.— For the purposes of this rule a claim for ejectment of the defendant from immovable property let out to him and a claim for money due from him on account of rent or*

*compensation for use and occupation of that property, shall be deemed to be claims in respect of distinct causes of action":*

*(b) for the illustration, the following illustration shall be substituted, namely:— "Illustration.— A lets immovable property to B at a yearly rent. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid, and the tenancy is determined before A sues B in 1908, only for the rent due for 1906. A may afterwards sue B for ejectment but not for the rent due for 1905 or 1907".*

***O.2 R. 3. Joinder of causes of action****— (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.*

*(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.*

***O.2 R. 4. Only certain claims to be joined for recovery of immovable property****— No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, except—*

*(a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;*

*(b) claims for damages for breach of any contract under which the property or any part thereof is held; and*

*(c) claims in which the relief sought is based on the same cause of action:*

*Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.*

**Specific Relief Act**

***Section 14**: Contracts not specifically enforceable.—*

*(1) The following contracts cannot be specifically enforced, namely:—*

*(a) a contract for the non-performance of which compensation in money is an adequate relief;*

*(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;*

*(c) a contract which is in its nature determinable;*

*(d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.*

*(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.*

*(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:—*

*(a) where the suit is for the enforcement of a contract,—*

*(i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once: Provided that where only a part of the*

*loan has been advanced the lend or is willing to advance the remaining part of the loan in terms of the contract; or*

*(ii) to take up and pay for any debentures of a company;*

*(b) where the suit is for,—*

*(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or*

*(ii) the purchase of a share of a partner in a firm;*

*(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:*

*Provided that the following conditions are fulfilled, namely:—*

*(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;*

*(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and*

*(iii) the defendant has, in persuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.*

***Section 40(3)*** *The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.*

***Section 41***. *Injunction when refused.—An injunction cannot be granted—*

*(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;*

*(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;*

*(c) to restrain any person from applying to any legislative body;*

*(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;*

*(e) to prevent the breach of a contract the performance of which would not be specifically enforced;*

*(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;*

*(g) to prevent a continuing breach in which the plaintiff has acquiesced;*

*(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;*

*(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;*

*(j) when the plaintiff has no personal interest in the matter.*

## *Suits Valuation Act, Section 11*

*11. Procedure where objection is taken on appeal on revision that a suit or appeal was not properly valued for jurisdictional purposes. -*

*(1) Notwithstanding anything 1in section 578 of the Code of Civil Procedure (14 of 1882) and objection that by reason of the over-valuation or under- valuation of a suit or appeal a Court of first instance or lower Appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an Appellate Court unless. -*

*(a) The objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower Appelate Court in the memorandum of appeal to that Court, or*

*(b) The Appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.*

*(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the Appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower Appellate Court.*

*(3) If the objection was taken in that manner and the Appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.*

*(4) The provisions of this section with respect to an Appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under Section 622 of the 'Code of Civil Procedure (14 of 1882)] or other enactment for the time being in force.*

*(5) This section shall come into force on the first day of July 1887.*

*(Sections 578 and 622 of Old C.P.C. 1882 correspond to sections 99 and 115 of new C.P.C. 1908 respectively)*

***Contract Act, Section 28***

***Agreements in restrain of legal proceedings, void*** *Every agreement:*

*(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights;*

*(b) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.*

*Exception 1 : Saving of contract to refer to arbitration dispute that may arise. This section shall not render illegal contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only and amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.*

*Exception 2: Saving of contract to refer question that have already arisen - Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to reference to arbitration.*

**U.P. Co-operative Societies Act, 1965**

***"70.*** *Disputes which may be referred to arbitration –(1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management of the business or co-operative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises-*

*(a) among members, past members and persons claiming through members past members and deceased members; or*

*(b) between a member, past member or any person claiming through, a member, past member or deceased member, and the society, its committee of management or any officer, agent or employee of the society, including any past officer, agent or employee;*

*(c) between the society or its committee and any past committee, any officer agent or employee or any past officer, past gent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent, or deceased employee of the society; or;*

*(d) between a co-operative society and any other co-operative society or societies;*

*such dispute shall be referred to the Registrar for action in accordance with the provisions of this Act and the rules and no court shall have jurisdiction to entertain any suit or other proceeding in respect of any such dispute:*

*Provided that a dispute relating to an election under the provisions of this Act or rules made thereunder shall not be referred to the registrar until after the declaration of the result of such election. (Ins. By U.P. act No. 17 of 1977)*

*(2) For the purpose of sub-section (1), the following shall be deemed to be included in dispute relating to the constitution, management or the business of a co-operative society, namely-*

*(b) claims for amounts due when demand for playment is made is either refused or not complied with whether such claims are admitted or not by the opposite party;*

*(c) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;.*

*(d) a claim by a society for any loss caused to it by a member, officer, agent or employee including past or deceased member, officer, agent, or employee, whether individually or collectively and whether such loss be admitted or not; and*

*(e) all matters relating to the objects of the society mentioned in the bye-laws as also those relating to the election of office-bearers.*

*(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute relating to the constitution, management or the business of co-operative society, decision thereon*

*of the Registrar shall be final and shall not be called in question in any court.*

***71.*** *Reference of dispute to arbitration- (1) On receipt of a reference under sub-section (1) of section 70, the Registrar may, subject to the provisions of the rules, if any-*

*(f) decide the dispute himself, or*

*(g) refer it for decision to any arbitrator appointed by him, or*

*(h) refer it, if the parties so request in writing, for decision to a board of arbitrators consisting of the three persons to be appointed in the prescribed manner.*

*(i) The Registrar may, for reasons to be recorded, withdraw any reference made under clause (b) or (c) of sub-section (1) and refer it to another arbitrator or board of arbitrators or decide it himself.*

*(j) The Registrar, the arbitrator or the board of arbitrators, to whom a dispute is referred for decision under this section may pending the decision of the dispute make such interlocutory orders including attachment of property as he or they may deem necessary in the interest of justice.*

*(k) The decision given by the Registrar, the arbitrator or the board of arbitrators under this section shall hereinafter be termed as award.*

*(l) The procedure to be followed by the registrar, the arbitrator or the board of arbitrators in deciding a dispute and making an award under this section shall be as may be prescribed.*

***102.*** *Finality of orders and decisions- Every award made under section 71 and every order of the nature referred to in sub-section (1) of section 98 where no appeal has been preferred against*

*such award or order under Section 97 or section, as the case may be, and every decision in appeal under the said sections, shall, subject to Section 98, be final and binding on the parties concerned and shall not be questioned in any court."*

## Appendix – B

***Dhurandhar Prasad Singh v. Jai Prakash University, AIR 2001 SC 2552*** (paras 12 to 15 and 21 to 23 are quoted below)

*"12. Again, in the case of Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others, AIR 1970 S.C. 1475, the Court was considering scope of objection under Section 47 of the Code in relation to the executability of a decree and it was laid down that only such a decree can be subject matter of objection which is nullity and not a decree which is erroneous either in law or on facts. J.C. Shah, J. speaking for himself and on behalf of K.S. Hegde and A.N. Grover, JJ., laid down the law at pages 1476-77 which runs thus :-*

*"A Court executing a decree cannot go behind the decree between the parties or their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.*

*When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record; where*

*the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction."*

*13. In the case of Everest Coal Company (P) Ltd. v. State of Bihar and others, 1978(1) SCC 12: AIR 1977 SC 2304, this court held that leave for suing the receiver can be granted even after filing of the suit and held that the infirmity of not obtaining the leave does not bear upon the jurisdiction of the trial court or the cause of action but it is peripheral. It also held that if a suit prosecuted without such leave culminates in a decree, the same is liable to be set aside. These observations do not mean that the decree is nullity. On the other hand, the observation of the Court at page 15 that "any litigative disturbance of the court's possession without its permission amounts to contempt of its authority, and the wages of contempt of Court in this jurisdiction may well be voidability of the whole proceeding" would lend support to the view and such decree is voidable but not void.*

*14. In the case of Haji Sk. Subhan v. Madhorao, AIR 1962 Supreme Court 1230, the question which fell for consideration of this Court was as to whether an executing Court can refuse to execute a decree on the ground that the same has become inexecutable on account of the change in law in Madhya Pradesh by promulgation of M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 and a decree was passed in*

*ignorance of the same. While answering the question in the affirmative, the Court observed at page 1287 thus :-*

*"The contention that the Executing Court cannot question the decree and has to execute it as it stands, is correct, but this principle has no operation in the facts of the present case. The objection of the appellant is not with respect to the invalidity of the decree or with respect to the decree being wrong. His objection is based on the effect of the provisions of the Act which has deprived the respondent of his proprietary rights, including the right to recover possession over the land in suit and under whose provisions the respondent has obtained the right to remain in possession of it. In these circumstances, we are of opinion that the executing Court can refuse to execute the decree holding that it has because inexecutable on account of the change in law and its effect."*

*15. In the case of Vidya Sagar v. Smt. Sudesh Kumari and others, AIR 1975 Supreme Court 2295, an objection was taken under Section 47 of the Code to the effect that the decree passed was incapable of execution after passing of U.P. Zamindari Abolition and Land Reforms Act, 1950, and the objection was allowed by the High Court and when the matter was brought to this Court, the order was upheld holding that decree was incapable of execution by subsequent promulgation of legislation by State legislature.*

*21. Thus the expressions "void and voidable" have been subject matter of consideration on innumerable occasions by courts. The expression "void" has several facets. One type of void acts,*

*transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.*

*22. Under Section 47 of the Code, all questions arising between the parties to the suit in which the decree was passed or their representatives relating to the execution, discharge or satisfaction of decree have got to be determined by the court executing the decree and not by a separate suit. The powers of Court under Section 47 are quite different, and much narrower than its powers*

*of appeal, revision or review. A first appellate Court is not only entitled but obliged under law to go into the questions of facts as well like trial court apart from questions of law. Powers of second appellate Court under different statutes like Section 100 of the Code, as it stood before its amendment by Central Act 104 of 1976 with effect from 1.2.1977, could be exercised only on questions of law. Powers under statutes which are akin to Section 100 of the Code, as amended and substituted by the aforesaid Central Act, have been further narrowed down as now in such an appeal only substantial question of law can be considered. The powers of this Court under Article 136 of the Constitution of India, should not be exercised simply because substantial question of law arises in a case, but there is further requirement that such question must be of general public importance and it requires decision of this Court. Powers of revision under Section 115 of the Code cannot be exercised merely because the order suffers from legal infirmly or substantial question of law arises, but such an error must suffer with the vice of error of jurisdiction. Of course, the revisional powers exercisable under the Code of Criminal Procedure and likewise in similar statutes stand on entirely different footing and much wider as there the court can go into correctness, legality or propriety of the order and regularity of proceeding of inferior court. It does not mean that in each and every case the revisional court is obliged to consider question of facts as well like a first appellate Court, but the court has discretion to consider the same in appropriate cases whenever it is found expedient and not in each and every case. Discretion, undoubtedly, means judicial discretion and not whim, caprice or fancy of a Judge. Powers of review*

*cannot be invoked unless it is shown that there is error apparent on the face of the record in the order sought to be reviewed.*

*23. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus it is plain that executing Court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and nullity, apart from the ground that decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing. In the case on hand, the decree was passed against the governing body of the College which was defendant without seeking leave of the Court to continue the suit against the University upon whom the interest of the original defendant devolved and impleading it. Such an omission would not make the decree void ab initio so as to invoke application of Section 47 of the Code and entail dismissal of execution. The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available under law on the ground that original defendant absented himself from the proceeding of the suit after appearance as it had no longer any interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law.*

***Kiran Singh v. Chaman Paswan, AIR 1954 SC 340*** (Paras 6 and 7 are quoted below)

*"6. The answer to these contentions must depend on what the position in law is when a Court entertain a suit or an appeal over which it has no jurisdiction and what the effect of Section 11 of the Suit Valuation Act is on that position. 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, whether it is pecuniary or territorial or whether, it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District, Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position.*

*7. Section 11 enacts that notwithstanding anything in Section 578 of the Civil Procedure Code an objection that a Court which had no jurisdiction over a suit or appeal had exercised it by reason of over-valuator or under- valuation, should not be entertained by an appellate court, except as provided in the Section. Then follow provisions as to when the objections could be entertained, and how they are to be dealt with. The drafting of the Section has come in - and deservedly-for considerable criticism; but amidst much that is*

*obscure and confused, there is one principle which stands out clear and conspicuous. It is that a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for over-valuation or under- valuation, is not to be treated as, what it would be but for the Section, null and void, and that an objection to jurisdiction based on over-valuation or under-valuation, should be dealt with under that Section and not otherwise.*

*The reference to Section 578, now Section 99, C.P.C., in the opening words of the Section is significant. That Section, while providing that no decree shall be reversed or vaired in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the Courts which passed them lacked jurisdiction as a result of over-valuation or under-valuation. It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a Court based on over-valuation or under- valuation shall not be entertained by an appellate Court except in the manner and to the extent mentioned in the Section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on over-valuation or under-valuation can be raised otherwise than in accordance with it."*

***Balvant N. Viswamitra v. Yadav Sadashiv Mule (D), AIR 2004 SC 4377*** (Paras 10 to 17 are quoted below) (Para 9 quoted in *Sarup Singh, 2011,* infra)

*"10. Before five decades, in Kiran Singh and others v. Chaman Paswan and others, 1955(1) SCR 117: AIR 1954 SC 340, this Court declared :*

*"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 wherever and whenever 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." (Emphasis supplied)*

*11. The said principle was reiterated by this Court in Seth Hiralal Patni v. Sri Kali Nath, 1962(2) SCR 747**:** AIR 1962 SC 199. The Court said : "Competence of a Court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction."*

*12. In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others, 1971(1) SCR 66: AIR 1970 SC 1475, a decree of possession was passed by the Court of Small Causes which was confirmed in appeal as well as in revision. In execution proceedings, it was contended that the Small Causes Court had no jurisdiction to pass the decree and, hence, it was a nullity.*

*Rejecting the contention, this Court stated :*

*"A Court executing a decree cannot go behind the decree : between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect*

*in law or on facts. Until it is set aside by an appropriate proceedings in appeal or revision, a decree even if it be erroneous is still binding between the parties."*

*13. Suffice it to say that recently a Bench of two Judges of this Court has considered the distinction between null and void decree and illegal decree in Rafique Bibi v. Sayed Waliuddin, AIR 2003 SC 3789: 2004(1) SCC 287. One of us (R.C. Lahoti, J. as his Lordships then was), quoting with approval the law laid down in Vasudev Dhanjibhai Modi, stated :*

*"What is 'void' has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the Court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the Court passing the decree must be patent on its face in order to enable the executing Court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an executing Court cannot go behind the decree must prevail.*

*Two things must be clearly borne in mind. Firstly, the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be a 'a nullity' and 'void' but these terms have no absolute sense; their meaning is relative, depending upon the Court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results. (Administrative Law, Wade and Forsyth, 8th Edn., 2000, p. 308). Secondly, there is a distinction between mere administrative orders and the decrees of Courts,*

*especially a superior Court. 'The order of a superior Court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of Court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit.' (ibid., p. 312)*

*A distinction exists between a decree passed by a Court having no jurisdiction and consequently being a nullity and not executable and a decree of the Court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing Court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior Court failing which he must obey the common of the decree. A decree passed by a Court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings." (emphasis supplied)*

*14. From the above decisions, it is amply clear that all irregular or wrong decrees or orders are not necessarily null and void. An erroneous or illegal decision, which is not void, cannot be objected in execution or collateral proceedings.*

*15. Before more than a century, in Malkarjun Bin Shidramappa Pasare v. Narhari Bin Shivappa and another, 1900(27) IA 216 : ILR 25 Bombay 337 (PC), the executing Court wrongly held that a particular person represented the estate of the deceased judgment-debtor and put the property for sale in execution. Drawing the distinction between absence of jurisdiction and wrong exercise thereof, the Privy Council observed :*

*"He contended that he was not the right person, but the Court, having received his protest, decided that he was the right person, and so proceeded with the execution. In so doing the Court was exercising its jurisdiction. It made a sad mistake, it is true; but a Court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken, the decision, however wrong, cannot be disturbed."*

*16. In Ittavira Mathai v. Varkey Varkey and another, 1964(1) SCR 495: AIR 1964 SC 907, this Court stated:*

*"If the suit was barred by time and yet the Court decreed it, the Court would be committing an illegality and therefore the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. But it is well settled that a Court having jurisdiction over the subject-matter of the suit and over parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do... If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity." (emphasis supplied).*

*17. Again, in Bhawarlal v. Universal Heavy Mechanical Lifting Enterprises, 1999(1) SCC 558: AIR 1999 SC 246, this Court held that "even if the decree was passed beyond the period of limitation, it would be an error of law, or at the highest, a wrong decision which can be corrected in appellate proceedings and not by the executing Court which was bound by such decree."*

***Sarup Singh v. Union of India AIR 2011 SC 514*** **(paras 19 to 23 are quoted below)**

*"19. But, if a decree is found to be nullity, the same could be challenged and interfered with at any subsequent stage, say, at the execution stage or even in a collateral proceeding. This is in view of the fact that if a particular Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such Court would be without jurisdiction and the same is non-est and void ab initio.*

*20. The aforesaid position is well-settled and not open for any dispute as the defect of jurisdiction strikes at the very root and authority of the Court to pass decree which cannot be cured by consent or waiver of the parties. This Court in several decisions has specifically laid down that validity of any such decree or order could be challenged at any stage. In Union of India v. Sube Ram & Others, reported in (1997)9 SCC 69 this court held thus :*

*"5. [...] here is the case of entertaining the application itself; in other words, the question of jurisdiction of the court. Since the appellate court has no power to amend the decree and grant the enhanced compensation by way of solatium and interest under Section 23(2) and proviso to Section 28 of the Act, as amended by Act 68 of 1984, it is a question of jurisdiction of the court. Since courts have no jurisdiction, it is the settled legal position that it is a nullity and it can be raised at any stage."*

*21. In yet another case of Amrit Bhikaji Kale & Others v. Kashinath Janardhan Trade & Anothers, reported in (1983) 3 SCC 437: AIR 1983*

*SC 643 this Court has held that when a Tribunal of limited jurisdiction erroneously assumes jurisdiction by ignoring a statutory provision and its consequences in law on the status of parties or by a decision are wholly unwarranted with regard to the jurisdictional fact, its decision is a nullity and its validity can be raised in collateral proceeding.*

*22. In Balvant N. Viswamitra & Others v. Yadav Sadashiv Mule (Dead) Through Lrs. & Others, reported in (2004)8 SCC 706 :AIR 2004 SC 4377 this Court stated thus :*

*"9. The main question which arises for our consideration is whether the decree passed by the trial court can be said to be "null" and "void". In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings."*

*23. In Chiranjilal Shrilal Goenka (deceased) Through Lrs. v. Jasjit Singh & Others, reported in (1993)2 SCC 507 this Court stated thus :*

*"18. It is settled law that a decree passed by a court without jurisdiction on the subject-matter or on the grounds on which the*

*decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party. ....."*

***Subhas Mahadevasa Habib v. Nemasa Ambasa Dharmadas, AIR 2007 SC 1828*, para 25 is quoted below:**

> *"25. Though Section 21A of the Code speaks of a suit not being maintainable for challenging the validity of a prior decree between the same parties on a ground based on an objection as to "the place of suing", there is no reason to restrict its operation only to an objection based on territorial jurisdiction and excluding from its purview a defect based on pecuniary jurisdiction. In the sense in which the expression "place of suing" has been used in the Code it could be understood as taking within it both territorial jurisdiction and pecuniary jurisdiction. Section 15 of the Code deals with pecuniary jurisdiction and, Sections 15 to 20 of the Code deal with 'place of suing'. The heading 'place of suing' covers Section 15 also. This Court in The Bahrain Petroleum Co. Ltd. v. P.J. Pappu & Anr. [(1966)1 SCR 461: AIR 1966 SC 634] made no distinction between Section 15 on the one hand and Sections 16 to 20 on the other, in the context of Section 21 of the Code. Even otherwise, considering the interpretation placed by this Court on Section 11 of the Suits Valuation Act and treating it as equivalent in effect to Section 21 of the Civil Procedure Code, as it existed prior to the amendment in 1976, it is possible to say, especially in the context of the amendment brought about in Section 21 of the Code by Amendment Act 104 of 1976, that Section 21A was intended to cover a challenge to a prior decree as regards lack of jurisdiction, both territorial and pecuniary, with reference to the place of suing, meaning thereby the court in which the suit was instituted. As can be seen, the Amendment Act 104 of 1976 introduced sub-*

*section (2) relating to pecuniary jurisdiction and put it on a par with the objection to territorial jurisdiction and the competence to raise an objection in that regard even in an appeal from the very decree. This was obviously done in the light of the interpretation placed on Section 21 of the Code as it existed and Section 11 of the Suits Valuation Act by this Court in Kiran Singh & Ors. v. Chaman Paswan & ors. [(1955)1 SCR 117]: AIR 1954 SC 340 followed by Seth Hiralal Patni v. Sri Kali Nath [(1962)2 SCR 747] : AIR 1962 SC 199, and The Bahrein Petroleum Co. Ltd. v. P.J. Pappu & Anr. (supra). Therefore, there is no justification in understanding the expression "objection as to place of suing'" occurring in Section 21A as being confined to an objection only in the territorial sense and not in the pecuniary sense. Both could be understood, especially in the context of the amendment to Section 21 brought about the Amendment Act, as objection to place of suing. It appears that when the Law Commission recommended insertion of Section 21A into the Code, the specific provision subsequently introduced in sub-section (2) of Section 21 relating to pecuniary jurisdiction was not there. Therefore, when introducing sub-section (2) of Section 21 by the Amendment Act 104 of 1976, the wordings of Section 21A as proposed by the Law Commission was not suitably altered or made comprehensive. Perhaps, it was not necessary in view of the placing of Sections 15 to 20 in the Code and the approach of this Court in Bahrein Petroleum Co. Ltd. (supra). But we see that an objection to territorial jurisdiction and to pecuniary jurisdiction, is treated on a par by Section 21. The placing of Sections 15 to 20 under the heading 'place of suing' also supports this position. Taking note of the objec of the amendment in the light of the law as expounded by this Court, it would be in congruous to hold that Section 21A takes in*

*only an objection to territorial jurisdiction and not to pecuniary jurisdiction. We are therefore inclined tohold that in the suit O.S. No. 4 of 1972, the validity of the decree in O.S. No. 61 of 1971 could not have been questioned based on alleged lack of pecuniary jurisdiction. Of course, the suit itself was not for challenging the validity of the decree in O.S. No. 61 of 1971 and the question of the effect of the decree in O.S. No. 61 of 1971 only incidentally arose. In a strict sense, therefore, Section 21A of the Code may not ipso facto apply to the situation."*

***Koopilan Uneen's daughter Pathumma v. Koopilan Uneen's Son Kuntalan Kutty AIR 1981 SC 1683, para 3.***

*3. We have heard learned counsel for the parties on the question of jurisdiction. An unfortunate aspect of this litigation has been that although that question has been agitated already in three courts and has been bone of contention between that parties for more than a decade, the real provision of law which clinches it was never put forward on behalf of the appellant before us nor was adverted to by the learned District Judge or the High Court. That provision is contained in sub-section (1) of Section 21 of the Civil Procedure Code which runs thus :*

*"21. (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."*

*In order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfillment of the following three conditions is essential:*

*(1) The objection was taken in the Court of first instance.*
*(2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.*
*(3) There has been a consequent failure of justice.*

*All these three conditions must co-exist. Now in the present case conditions Nos. 1 and 2 are no doubt fully satisfied; but then before the two appellate Courts below could allow the objection to be taken, it was further necessary that a case of failure of justice on account of the place of suing having been wrongly selected was made out. Not only was no attention paid to this aspect of the matter but no material exists on the record from which such failure of justice may be inferred. We called upon learned counsel for the contesting respondents to point out to us even at this stage any reason why we should hold that a failure of justice had occurred by reason of Manjeri having been chosen as the place of suing but he was unable to put forward any. In this view of the matter we must hold that the provisions of the sub-section above extracted made it imperative for the District Court and the High Court not to entertain the objection whether or not it was otherwise well founded. We, therefore, refrain from going into the question of the correctness of the finding arrived at by the High Court that the Manjeri Court had no territorial jurisdiction to take cognizance of the application praying for final decree.* (Underlining supplied)

***State of Andhra Pradesh. v. Challa Ramkrishna Reddy, AIR 2000 SC 2083, paras 29 to 32.***

*29. In N. Nagendra Rao and Co. v. State of A. P., AIR 1994 SC 2663: (1994) 6 SCC 205, it was observed :-*

*"But there the immunity ends. No civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in Nineteenth Century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government at par with any other juristic legal entity. Any watertight compartmentalisation of the functions of the State as "sovereign and non-sovereign" or "governmental or non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or ordinary citizen cannot be thrown but merely because it was done by an officer of the State even though it was against law and negligently. Needs of the State, duty of its officials and right of the citizens are required to be*

*reconciled so that the rule of law in a welfare State is not shaken. Even in America where this doctrine of sovereignty found its place either because of the 'financial instability of the infant American States rather than to the stability of the doctrine theoretical foundation', or because of 'logical and practical ground', or that 'there could be no legal right as against the State which made the law gradually gave way to the movement from, 'State irresponsibility to State responsibility.' In welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives, has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity."*

*30. The whole question was again examined by this Court in Common Cause, A Registered Society v. Union of India, (1999) 6 SCC 667: AIR 1999 SC 2979, in which the entire history relating to the institution of suits by or against the State or, to be precise, against Government of India, beginning from the time of East India Company right up to the stage of Constitution, was considered and the theory of immunity was rejected. In this process of judicial advancement, Kasturi Lal's case (supra) has paled into insignificance and is no longer of any binding value.*

*31. This Court, through a stream of cases, has already awarded compensation to the persons who suffered personal injuries at the hands of the officers of the Government including Police Officers and personnel for their to tortious act. Though most of these cases were decided under Public law domain, it would not make any difference as in the instant case, two vital factors, namely, police negligence as also the Sub-Inspector being in conspiracy are established as a fact.*

*32. Moreover, these decisions, as for example, Nilabti Behera v. State of Orissa, (1993) 2 SCC 746 : (1993) 2 SCR 581: AIR 1993 SC 1960; In Re: Death of Sawinder Singh Grover, (1995) Supp (4) SCC 450 : (1992) 6 JT (SC) 271 : 1992 (3) Scale 34; and D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 : AIR 1997 SC 610, would indicate that so far as Fundamental Rights and human rights or human dignity are concerned, the law has marched ahead like a Pegasus but the Government attitude continues to be conservative and it tries to defend it action or the tortuous action of its officers by raising the plea of immunity for sovereign acts or acts of State, which must fail.*

***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, 2002(5) SCC 111****(Paras 7, 14, 22, 23 and 25)*

*7. It would be a practical impossibility and an unnecessary exercise to note each of the multitude of decisions on the point. It is enough for our present purposes to merely note that the decisions may be categorized broadly into those which express a narrow and those that express a more liberal view and to consider some decisions of this Court as illustrative of this apparent divergence. In the ultimate analysis the difference may perhaps be attributable to different stages in the history of the development of the law by judicial decisions on the subject.*

*14. By 1975 Mathew, J. in Sukhdev Singh and others v. Bhagatram Sardar Singh Raghuvanshi and another, 1975(3) SCR 619 noted that the concept of "State" in Article 12 had undergone "drastic changes in recent years". The question in that case was whether the Oil and Natural Gas Commission, the Industrial Finance Corporation and the Life Insurance Corporation each of which were public Corporations set up by statutes were authorities and, therefore within the definition of State in Article 12. The Court affirmed the decision in Rajasthan State Electricity Board v. Mohan Lal (supra) and held that the Court could compel compliance of statutory rules. But the majority view expressed by A.N. Ray, CJ also indicated that the concept would include a public authority which :*

*"is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. Such an authority is not*

*precluded from making a profit for the public benefit." (Emphasis supplied)*

*22. Side-stepping the majority approach in Sabhajit Tewary, the 'drastic changes' in the perception of 'State' heralded in Sukhdev Singh by Mathew, J. and the tests formulated by him were affirmed and amplified in Ramana v. International Airport Authority of India, AIR 1979 SC 1628. Although the International Airport Authority of India is a statutory Corporation and, therefore, within the accepted connotation of State, the Bench of three Judges developed the concept of State. The rationale for the approach was the one adopted by Mathew, J. in Sukhdev Singh :*

*.....In the early days, when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions, which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the frame work of civil service was not sufficient to handle the new tasks which were often of specialised and highly technical character. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrable need that the public Corporation came into being as the third arm of the Government."*

*23. From this perspective, the logical sequitur is that it really does not matter what guise the State adopts for this purpose, whether by a Corporation established by statute or incorporated under a law such as the Companies Act or formed under the Societies Registration Act,*

*1860. Neither the form of the Corporation, nor its ostensible autonomy would take away from its character as 'State' and its constitutional accountability under Part III vis-a-vis the individual if it were in fact acting as an instrumentality or agency of Government.*

*25. The tests propounded by Mathew, J. in Sukhdev Singh were elaborated in Ramana and were reformulated two years later by a Constitution Bench in Ajay Hasia v. Khalid Mujib Sehravardi (supra). What may have been technically characterised as 'obiter dicta' in Sukhdev Singh and Ramana (since in both cases the "authority" in fact involved was a statutory corporation), formed the ratio decidendi of Ajay Hasia. The case itself dealt with a challenge under Article 32 to admissions made to a college established and administered by a Society registered under Jammu and Kashmir Registration of Society Act, 1898. The contention of the Society was that even if there were an arbitrary procedure followed for selecting candidates for admission, and that this may have resulted in denial of equality to the petitioners in the matter of administration in violation of Article 14, nevertheless Article 14 was not available to the petitioners because the Society was not a State within Article 12.*