



महाराष्ट्र शासन राजपत्र

असाधारण भाग आठ

वर्ष ४, अंक ४६]

बुधवार, जून २७, २०१८/आषाढ ६, शके १९४०

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असाधारण क्रमांक ८७

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधि व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Code of Civil Procedure (Maharashtra Amendment) Ordinance, 2018 (Mah. Ord. XVIII of 2018), is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

R. G. BHAGWAT,

I/c. Secretary (Legislation) to Government,
Law and Judiciary Department.

[Translation in English of the Code of Civil Procedure (Maharashtra Amendment) Ordinance, 2018 (Mah. Ord. XVIII of 2018), published under the authority of the Governor].

LAW AND JUDICIARY DEPARTMENT

Mantralaya, Madam Cama Marg, Hutatma Rajguru Chowk,
Mumbai 400 032, dated the 27th June 2018.

MAHARASHTRA ORDINANCE No. XVIII OF 2018.

AN ORDINANCE

*further to amend the Code of Civil Procedure, 1908, in its application
to the State of Maharashtra.*

WHEREAS both Houses of the State Legislature are not in session;

AND WHEREAS the Governor of Maharashtra is satisfied that
circumstances exist which render it necessary for him to take immediate
action further to amend the Code of Civil Procedure, 1908, in its application
to the State of Maharashtra, for the purposes hereinafter appearing;

AND WHEREAS the instructions from the President under the proviso
to clause (1) of article 213 of the Constitution of India have been obtained;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Maharashtra is hereby pleased to promulgate the following Ordinance, namely :—

Short title
and
commencement.

1. (1) This Ordinance may be called the Code of Civil Procedure (Maharashtra Amendment) Ordinance, 2018.

(2) It shall come into force at once.

Deletion of
section 9A of 5
of 1908, in its
application to
the State of
Maharashtra.

2. Section 9A of the Code of Civil Procedure, 1908, in its application to the State of Maharashtra (hereinafter referred to as “the principal Act”), shall be deleted. 5 of 1908.

Savings.

3. Notwithstanding the deletion of section 9A of the principal Act,—

(1) where consideration of a preliminary issue framed under section 9A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Ordinance, 2018 (hereinafter, in this section, referred to as “the Amendment Ordinance”), the said issue shall be deemed to be an issue framed under Order XIV of the principal Act and shall be decided by the Court, as it deems fit, along with all other issues, at the time of final disposal of the suit itself :

Mah.
Ord.
XVIII
of 2018.

Provided that, the evidence, if any, led by any party or parties to the suit, on the preliminary issue so framed under section 9A, shall be considered by the Court along with evidence, if any, led on other issues in the suit, at the time of final disposal of the suit itself ;

(2) in all the cases, where a preliminary issue framed under section 9A has been decided, holding that the court has jurisdiction to entertain the suit, and a challenge to such decision is pending before a revisional Court, on the date of commencement of the Amendment Ordinance, such revisional proceedings shall stand abated :

Provided that, where a decree in such suit is appealed from any error, defect or irregularity in the order upholding jurisdiction shall be treated as one of the ground of objection in the memorandum of appeal as if it had been included in such memorandum ;

(3) in all cases, where a preliminary issue framed under section 9A has been decided, holding that the Court has no jurisdiction to entertain the suit, and a challenge to such decision is pending before an appellate or revisional Court, on the date of commencement of the Amendment Ordinance, such appellate or revisional proceedings shall continue as if the Amendment Ordinance has not been enacted and section 9A has not been deleted :

Provided that, in case the appellate or revisional Court, while partly allowing such appeal or revision, remands the matter to the trial Court for reconsideration of the preliminary issue so framed under section 9A, upon receipt of these proceedings by the trial Court, all the provisions of the principal Act shall apply ;

(4) in all cases, where an order granting an *ad-interim* relief has been passed under sub-section (2) of section 9A prior to its deletion, such order shall be deemed to be an *ad-interim* order made under Order XXXIX of the principal Act and the Court shall, at the time of deciding the application in which such an order is made, either confirm or vacate or modify such order.

STATEMENT.

Section 9A was inserted in the Code of Civil Procedure, 1908 (5 of 1908), in its application to the State of Maharashtra, by the Code of Civil Procedure (Maharashtra Amendment) Act, 1970 (Mah. XXV of 1970), with a view to undo the effect of a judgment of High Court delivered in the case of *Institute Indo-Portuguese v. Borges* [(1958) 60 Bom. L.R. 660].

At the time, when a suit was filed against the Government in the Bombay City Civil Court without a valid notice being issued under section 80 of the Code, the Court would, without going into the question of jurisdiction, grant an *ad-interim* injunction and an adjournment to the Plaintiff. This would enable the Plaintiff to issue a notice to the Government. After the expiry of the period of the notice, the Plaintiff would then withdraw the suit with liberty to file a fresh one and in the freshly filed suit seek continuation of the *ad-interim* injunction granted earlier.

It was, therefore, felt that the practice of granting injunctions, without going into the question of jurisdiction even though raised, was leading to grave abuse. It was against the backdrop that section 9A was introduced into the Code.

2. In 1976, the said Code has been extensively amended by the Code of Civil Procedure (Amendment) Act, 1976 (CIV of 1976), enacted by the Parliament. Therefore, to leave no room for any doubt whether the State amendments continued to be in force or stood repealed, the Maharashtra Amendment Act of 1970 was repealed and again section 9A is re-enacted by the Code of Civil Procedure (Maharashtra Amendment) Act, 1977 (Mah. LXV of 1977).

3. However, today, section 9A has become a cumbersome and tedious provision which has contributed to judicial backlog and given rise to several complications. It has been held, in *Meher Sing vs. Deepak Sawhny* [(1998) 3 Mh.LJ. 940], that where an issue of jurisdiction involves a mixed question of fact and law, parties must be given an opportunity to lead evidence. It has been held, in *Foreshore Co-operative Housing Society vs. Praveen D. Desai* [(2015) 6 SCC 412] and *Sandeep Gopal Raheja vs. Sonali Nimisha Arora* [(2016) SCC On Line Bom. 9378], that section 9A is mandatory in nature, that where the defendant raises an objection to the jurisdiction of the Court, the court has no discretion and is bound to frame an issue and decide it. It has been held, in *Mukund Ltd. v. Mumbai International Airport* ((2011) 2 Mah. LJ 936), that even a defendant cannot, as a matter of litigation strategy, decide not to press its jurisdictional objection at the hearing of the interim application. The question of whether section 9A includes a plea by the defendant that the suit is barred by the law of limitation is a vexed one, which has been referred to a larger Bench of the Supreme Court in *Jagdish Shyamrao Thorve v. Shri Mohan Sitaram Dravid*, SLP (C) 22438/ 2015, by virtue of an order dated the 17th August 2015.

Consequently, section 9A of the said Code has given rise to at least two judicial bottlenecks which have stymied the speedy disposal of cases. Firstly, when an issue is raised under section 9A of the said Code, a court cannot dispose a motion until the trial into such an issue is concluded and the issue is finally decided. The motion consequently remains pending for several years, and *ad-interim* relief masquerades virtually as final relief. Secondly, when such an issue is raised, two trials have to be conducted, *viz.*, one on the preliminary issue and the other on the remaining issues, each subject to its own round of appeals and Special Leave Petitions. All this needlessly burdens

the Court with duplication and results in a waste of judicial time and resources. In fact, in *Madhuriben K. Mehta vs. Ashwin Rupsi Nandu* ((2012) 5 Bom. CR 27), the Bombay High Court took the view that section 9A has led to the “abuse of duplication of work by repeated applications which has become an endemically circuitous practice.”

4. It is, therefore, considered expedient to amend the Code of Civil Procedure, 1908, in its application to the State of Maharashtra, by deleting the said section 9A.

5. An opportunity is also being taken to provide for the effect and consequences of the deletion of section 9A on the proceedings pending in the Courts on the date of commencement of the proposed Ordinance. It is proposed to provide for,—

(a) the pending preliminary issue to be decided at the time of final decision of the suit itself, along with other issues framed under Order XIV of the Code of Civil Procedure, 1908, including consideration of evidence already led in that regard;

(b) abetment of the revisions pending before revisional forum against the decision of the Trial Court holding that it has jurisdiction to entertain the suit so as to ensure the speedy and final disposal of the suit itself, while keeping alive the right of the defendant to challenge the finding on the issue of jurisdiction at the appellate stage, in case if the suit is finally decreed;

(c) continuation of appeals pending before Appellate Court against the decision of the Trial Court holding that it has no jurisdiction to entertain the suit, as if section 9A has not been deleted, as in such cases the suit itself has been dismissed finally; and

(d) providing that an *ad-interim* relief granted under sub-section (2) of section 9A prior to its deletion to be treated as an *ad-interim* order in the interim application made under Order XXXIX of the Code of Civil Procedure, 1908, which may be confirmed or vacated at the final hearing of the interim application.

6. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Code of Civil Procedure, 1908 (V of 1908), in its application to the State of Maharashtra, for the purposes aforesaid, this Ordinance is promulgated.

Mumbai,
Dated the 26th June 2018.

CH. VIDYASAGAR RAO,
Governor of Maharashtra.

By order and in the name of the Governor of Maharashtra,

N. J. JAMADAR,
Principal Secretary to Government and R.L.A.