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*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much*

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*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-I, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been*

*awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# JURISDICTION AS A DEFENCE

AUTHORED BY – ISHIKA JAIN

E-MAIL: ishikajainmrt2000@gmail.com

CONTACT NUMBER: 6395557920

UNIVERSITY/ COLLEGE: O.P. Jindal Global University

EDUCATIONAL LEVEL: LLB' batch of 2021

## **SUIT FOR THE EXPLANATION OF THE CONCEPT OF JURISDICTION AS A DEFENCE UNDER CODE OF CIVIL PROCEDURE, 1908**

MOST RESPECTFULLY SHOWETH:

1. That the term Jurisdiction is derived from the Latin words' "*juris*" and "*dicto*". Jurisdiction refers to the power granted by the law to a court, commission, or judge to resolve any difference between the parties, render a decision, or impose an order.<sup>1</sup> The important issue for the court is jurisdiction, which gets to the heart of the matter and determines the case's outcome either at the preliminary stage or on the merits. Any order that was made without the proper legal authority loses its validity and legal power.<sup>2</sup>
2. That a Civil Court by the pursuant of Section 9 of C.P.C can adjudicate a case under their jurisdiction if they fulfil sine quo non which are, that suit must be *civil in nature*<sup>3</sup> and *cognizance of the aforementioned suit shall not be expressly or impliedly barred by the law*.<sup>4</sup>
- a. **Suit Civil in Nature**- The expression encompasses citizen's private rights and obligations; political and religious issues are not included in that expression. A lawsuit with caste or religious discrimination as the main issue is not of a civil character.<sup>5</sup> However, if the main issue in a lawsuit is of a civil nature (the right to property or an office) and the adjudication incidentally involves the resolution of a caste issue or the determination relating to religious rights and ceremonies, it does not cease to be a civil nature lawsuit<sup>6</sup>, and

<sup>1</sup> Abdul Waheed Khan v. Bhawani, AIR 1966 SC 1718 at p. 1719; (1966) 3 SCR 617; Brij Rai Singh v. Laxman Singh, AIR 1961 SC 149 at p. 152; (1961) 1 SCR 616; Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma, 1995 Supp (4) SCC 286 at p. 318.

<sup>2</sup> Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393 at p. 397; Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma, 1995 Supp (4) SCC 286 at p. 318.

<sup>3</sup> Concise Oxford English Dictionary (2002) at p. 768; P.R. Aiyar, Advanced Law Lexicon (2005) Vol. III at pp. 2527-30; Justice C.K. Thakker, Encyclopaedic Law Lexicon (2009) Vol.I at pp. 2500-04.

<sup>4</sup> Official Trustee v. Sachindra Nath, AIR 1969 SC 823 at p. 827; (1969) 3 SCR 92; Ujjam Bai v. State of U.P., AIR 1962 SC 1621 at p. 1629; (1963) 1 SCR 778; Raja Soap Factory v. S.P. Shantharaj, AIR 1965 SC 1449; (1965) 2 SCR 800.

<sup>5</sup> Raja Soap Factory v. S.P. Shantharaj, AIR 1965 SC 1449; (1965) 2 SCR 800.

<sup>6</sup> Concise Oxford Dictionary (1990) at p. 206; see also, S.A.L. Narayan v. Ishwarlal, AIR 1965 SC 1818 at p. 1823; (1966) 1 SCR 190; Ramesh v. Gendalal Motilal Patni, AIR 1966 SC 1445; (1966) 3 SCR 198; Arbind Kumar v. Nand Kishore, AIR 1968 SC 1227; (1968) 3 SCR 322.

the civil court's jurisdiction is not suspended. In order to determine the primary question, which is of a civil nature, the court has jurisdiction to rule on those issues as well.<sup>7</sup>

- b. **Suits Impliedly Barred**- When broad legal principles prohibit a lawsuit, it is referred to as being impliedly barred. Where a specific remedy is prescribed by a statute, the individual who demands a remedy is thus denied any other form than that prescribed by the statute.<sup>8</sup> Similar to how certain lawsuits, despite being of a civil nature, are excluded from the jurisdiction of a civil court on the grounds of public policy, where an act establishes an obligation and enforces its performance in a specific manner, that performance cannot be enforced in any other manner. A civil judge lacks the jurisdiction to decide on political disputes.<sup>9</sup>
  - c. **Suits Expressly Barred**- When a lawsuit is expressly prohibited by any currently in effect law, it is said to be expressly banned. Every presumption should be made in favour of the civil court's jurisdiction, and the provisions for excluding a court's jurisdiction must be strictly construed.<sup>10</sup> If there is any doubt regarding the ousting of a civil court's jurisdiction, the court will err on the side of an interpretation that would maintain the jurisdiction. Similar to when a court of limited jurisdiction prima facie and incidentally says something, the jurisdiction of a civil court is not barred if the remedy given by the law is insufficient and all questions cannot be resolved by a special tribunal.<sup>11</sup>
3. That the jurisdiction of civil court is divided on the basis of Territory, Pecuniary and subject-matter jurisdiction.
  4. That, jurisdiction can be challenged on various stages. The CPC's Section 21 addresses the point where jurisdiction is contested. In Harshad Chiman Lal Modi v. DLF Universal Ltd. and Anr., reported in AIR 2005 SC 4446,<sup>12</sup> the Hon'ble Apex Court considered the jurisdictional challenge and noted that the jurisdiction of a court can be divided into a number of categories as mentioned above.
    - a. That When it comes to territorial and pecuniary jurisdiction, objection to such jurisdiction must be made as soon as feasible and, in any case, at or before resolution of issues. The law is clear that if such an objection is not made as soon as possible, it cannot be permitted to be made at a later time.<sup>13</sup> However, subject matter jurisdiction is entirely separate and is based on a different foundation. A court cannot take up a cause or matter if it lacks jurisdiction over the subject of the lawsuit due to any restrictions imposed by a legislation, charter, or commission.<sup>14</sup>
    - b. That An order issued by a court without jurisdiction is void, and its invalidity may be established whenever and wherever it is attempted to be enforced or relied upon, including during execution and during collateral

<sup>7</sup> Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma, 1995 Supp (4) SCC 286 at pp. 318-19.

<sup>8</sup> Explanation. 1 to Section 9.

<sup>9</sup> Sinha Ramanuja V. Ranga Ramanuja, AIR 1961 SC 1720: (1962) 2 SCR 509. SO. 1995 Supp (4) SCC 286: AIR 1995 SC 2001.

<sup>10</sup> Ibid, at pp. 318-19 (SCC): at PP. 2022-23 (AIR).

<sup>11</sup> Sinha Ramanuja v. Ranga Ramanuja, AIR 1961 SC 1720 at p. 1724: (1962) 2 SCR

<sup>12</sup> Harshad Chiman Lal Modi v. DLF Universal Ltd. and Anr., reported in AIR 2005 SC 4446

<sup>13</sup> Supra

<sup>14</sup> Supra

procedures.<sup>15</sup> A jurisdictional defect undermines the court's ability to issue any decree, and it cannot be corrected—not even with the parties' agreement.<sup>16</sup>

c. That In *Chief Engineer Hydel Project v. Ravinder Nath, reported in AIR 2008 SC 1315*,<sup>17</sup> the Supreme Court made the observation that once the original decree itself has been found to be without jurisdiction and subject to the doctrine of *coram non iudice*, it would not be appropriate to uphold the same on the basis that the jurisdictional challenge was not raised at the initial, First Appellate, or Second Appellate stage.<sup>18</sup>

5. That Jurisdiction face challenges as a Preliminary issue, which are as follows:

a. That When it seems from the assertion in the plaint that the litigation is banned by any statute, **Order 7 Rule 11(d)** requires that the plaint be dismissed. According to paragraph 13 of *Ramesh B. Desai v. Bipin Vadilal Mehta (AIR 2006 SC 3672)*,<sup>19</sup> this argument is known as a demurrer. However, in this regard, only the allegations in the plaint are to be taken into account, and neither the written statement of the defendant nor any applications made by the defendant, nor any evidence presented by the defendant, are to be taken into account. In *Bhau Ram v. Janak Singh, AIR 2012 SC 3023*,<sup>20</sup> paragraph 8, the Honourable Supreme Court made the following ruling:

*The law has been established by this court in a number of instances that while examining an application under order VII Rule 11 C.P.C., the court must look at the allegations in the plaint and ignore the defendant's pleas in its written statement.*<sup>21</sup>

b. That According to Section 9A of the CPC, if any of the parties to the suit object to the Court's jurisdiction to hear the case at the hearing of any application for granting or setting aside an order granting any interim relief, the Court shall proceed to decide the jurisdictional question as a preliminary issue at the hearing of such application before granting or setting aside the order granting the interim relief.<sup>22</sup> It states that any such application must be considered and resolved by the Court as quickly as possible and cannot, under any circumstances, be postponed until the hearing of the lawsuit. The legal rules in Section 9A's Subsection (2) give the Court the authority to offer any temporary relief it deems necessary while it decides the preliminary question of jurisdiction.<sup>23</sup>

c. That According to *Vaish Aggarwal Panchayat v. Inder Kumar (AIR 2015 SC 3357)*,<sup>24</sup> this question is a mixed question of law and fact that necessitates consideration of an earlier judgement and pleading. As a result, the plaint cannot be rejected on this basis in accordance with Order 7 Rule 11.(d).

<sup>15</sup> Supra, n. 60; see also, *Indian Airlines Corpn. v. Sukhdeo Rat*, (1971) 2 SCC 192; *Sideren, Pigment Cakes & Chemicals Mfg. Co.*, (1979) 4 SCC 12; Mulla, *Code of Civil Procedure* (2007), Vol. 1 at pp. 136-38.

<sup>16</sup> *Ramkanya Bai v. Jagdish*, (2011) 7 SCC 452; (2011) 3 SCC (Civ) 736

<sup>17</sup> *Chief Engineer Hydel Project v. Ravinder Nath*, reported in AIR 2008 SC 1315,

<sup>18</sup> Analysis drawn from supra

<sup>19</sup> *Ramesh B. Desai v. Bipin Vadilal Mehta (AIR 2006 SC 3672)*

<sup>20</sup> Supra 19

<sup>21</sup> *Ramesh B. Desai v. Bipin Vadilal Mehta (AIR 2006 SC 3672)*

<sup>22</sup> *Antulay v. R.S. Nayak*, (1988) 2 SCC 602

<sup>23</sup> Ehors administrassien, se, *Authors Lectures on Administrative Law*, (soz) Lecture 7; *Authors Administrative Law* (2012) Chap. 8.

<sup>24</sup> *Vaish Aggarwal Panchayat v. Inder Kumar (AIR 2015 SC 3357)*,

- d. That Order 7 Rule 11(d) states that a complaint may be dismissed at any time throughout a lawsuit, including after the resolution of all problems. Vithalbhai Pvt. Ltd. v. Union of India AIR 2005 SC 1891,<sup>25</sup> which cites Samar Singh v. Kedar Nath SAIR 1987 SC 1926<sup>26</sup> at para. 19, is quoted below:- This Court held in Samar Singh v. Kedar Nath, AIR 1987 SC 1929: 1987 Supp. SCC 663<sup>27</sup> that the right to summarily reject granted by Order 7 Rule 11 of the Code of Civil Procedure can be exercised at the beginning of the proceedings and is also available, in the absence of any statutory restrictions, to be exercised at any stage of subsequent proceedings. Although the court has the right to evaluate the maintainability of a claim at a later time, the court has also emphasised the need of making a preliminary objection as soon as practicable.<sup>28</sup>
- e. That Regarding the bar of limitation, it has been decided that order 7 rule 11(d) C.P.C. cannot be used unless it is clear from reading the petition that it is blocked by limitation. According to the ruling in Fatehji & Company v. L.M. Nagpal AIR 2015 SC 2301,<sup>29</sup> the suit for the specific performance of a sale agreement was time-barred by limitation when the plaint was read in its entirety and all of the accusations assumed to be true. In overturning the High Court's decision, it was determined that the trial court had properly dismissed the complaint in accordance with order 7 rule 11(d) C.P.C.<sup>30</sup>
- f. That The question of jurisdiction must therefore be resolved as a preliminary point or issue, even though O. 14 R. 2 is not required by Order 7 Rule 11(d),<sup>31</sup> if it does not call for the production of any evidence or an investigation of the relevant facts. However, even after gathering and weighing the pertinent material, such a question may be decided as a preliminary one under Order 14 Rule 2. But whereas Order 7 Rule 11 is required, this activity is optional.<sup>32</sup>
- g. That The plaint must be rejected if it does not disclose a cause of action, according to order 7 rule 11(a).<sup>33</sup> There are significant differences between failing to state a cause of action, which may be decided after hearing the evidence, and failing to state a cause of action, which must be determined only by reading the plaint.<sup>34</sup>
- h. That Order 14 Rule 2(2) prohibits the resolution of factual disputes. Major S.S. Khanna v. Brig. F.J. Dillon, AIR 1964 SC 497<sup>35</sup>, the honourable Supreme Court held in paragraph 18 that "**Normally every dispute in a lawsuit should be attempted by the Court: not to do so, particularly when the conclusion on issues even of law depends on the decision of issues of fact, would result in lop-sided trial of the suit.**" Even though order 14 rule 2(2) states that examination of evidence is not prohibited, decisions on issues of fact are since order 7 rule 11 governs the entirety of the filed. The contrast is that, when deciding a legal question

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<sup>25</sup> Vithalbhai Pvt. Ltd. v. Union of India AIR 2005 SC 1891

<sup>26</sup> Samar Singh v. Kedar Nath SAIR 1987 SC 1926

<sup>27</sup> Samar Singh v. Kedar Nath, AIR 1987 SC 1929: 1987 Supp. SCC 663

<sup>28</sup> Analysis drawn from, Samar Singh v. Kedar Nath, AIR 1987 SC 1929: 1987 Supp. SCC 663

<sup>29</sup> Fatehji & Company v. L.M. Nagpal AIR 2015 SC 2301

<sup>30</sup> Analysing order 7 rule 11(d) C.P.C

<sup>31</sup> Order 7 Rule 11(d), C.P.C

<sup>32</sup> order 7 rule 11(a), C.P.C

<sup>33</sup> order 7 rule 11(a), C.P.C

<sup>34</sup> Analysis drawn from aforementioned

<sup>35</sup> Major S.S. Khanna v. Brig. F.J. Dillon, AIR 1964 SC 497

as a preliminary matter, order 14 rule 2(2) permits consideration of evidence that is not denied or, ordinarily, cannot be denied.<sup>36</sup> Let's say that a complaint makes no mention of prior litigation involving the same parties and a similar cause of action. With certified copies of the pleadings and verdicts from the former litigation, the defendant argues that the lawsuit is precluded by res judicata or order 9 rule 9. Due to the absence of the bar, the plaint cannot be rejected in accordance with order 7 rule 11(d).<sup>37</sup>

- i. That However, under order 14 rule 2(2), the issue of bar framed on the defendant's plea may be considered as a preliminary issue after considering the evidence presented by the defendant in the form of certified copies, unless the plaintiff contests the accuracy of the same. Similar to order 14 rule 2(2)<sup>38</sup>, evidence provided by parties or their representatives in accordance with order 10 rule 2 may be used at this stage. Similar to order 10, rule 2, evidence from parties or their representatives may also be considered at order 14 rule 2(2). In reality, such a declaration might be taken into account even at the order 7 rule 11.<sup>39</sup>
6. While discussing the provisions of section 9 of the CPC, the Hon'ble Supreme Court in the case of ***Dhulabhai, etc. v. State of Madhya Pradesh and others reported in A.I.R. 1969 S.C. 78***<sup>40</sup> (Constitutional Bench) established the following law:
    - a. Where the statute gives an expiration to the orders of the special tribunals, the Civil Court's jurisdiction shall be held to be excluded if there is a sufficient remedy to do exactly what the Civil Courts typically do in a suit. However, this clause does not apply to situations in which a specific Act's requirements have not been followed or a statutory tribunal has not acted in accordance with the basic tenets of judicial procedure.<sup>41</sup>
    - b. Examining the design of the specific Act to determine whether the remedies offered are adequate or sufficient may be significant in cases where the court's authority is expressly barred, although doing so will not necessarily support that decision.<sup>42</sup>
    - c. When there is no stated exclusion, it is necessary to examine the remedies and the structure of the specific Act to ascertain the intent, and the outcome of the investigation may be significant. In the latter case, it is important to determine whether the statute establishes a special right or liability, stipulates how the right or liability will be determined, and further stipulates that all issues relating to the right or liability in question will be decided by the tribunals thus established. It is also important to determine whether the statute specifies any remedies that would typically be associated with actions in civil courts.<sup>43</sup>

<sup>36</sup> Supra 35

<sup>37</sup> Annamaniaidu, (1974) 1 SCC 567 at pp. 578-79; Gurbax Singh v. Financial Commr., 1991 Supp (1) SCC 167 at p. 175

<sup>38</sup> Ramkanya Bai v. Jagdish, (2011) 7 SCC 452; (2011) 3 SCC (Civ) 736; Bhanwar Lal v. Rajasthan Board of Muslim Wakt, (2014) 16 SCC sI: (2015) 3 SCC (Civ) 432; Vimal Kishor Shah v. Jayesh Dinesh Shah, (2016) 8 SCC 788; (2016) 4 SCC (Civ) 303.

<sup>39</sup> Firm Seth Radha Kishan v. Administrator, Municipal Committee, Ludhiana, AIR 1963 SC 1547; (1964) 2 SCR 273 Ittyavira Mathai Mathai v. Varkey Varkey, AIR 1964 SC 907; (1964) 1 SCR 495

<sup>40</sup> Dhulabhai, etc. v. State of Madhya Pradesh and others reported in A.I.R. 1969 S.C. 78

<sup>41</sup> AIR 1969 5C 78; (1968) 3 SCR 662.

<sup>42</sup> Ail a Pr se se. For detalia discustion, Be carlo, State of W. B. v. Dand Mantosh, 12 SCC 543. Ehors adminissrassien, se, Authors Lectures on Adminstratie dan, (soz) Lecture 7; Authors Administrative Law (2012) Chap. 8

<sup>43</sup> Sinha Ramanuja v. Ranga Ramanuja, AIR 1961 SC 1720; (1962) 2 SCR 509

- d. A claim that a specific Act's provisions are excess vires cannot be made before a tribunal established by that Act. Even the High Court is not permitted to address that issue about a revision or referral from the Tribunals' ruling.<sup>44</sup>
- e. A lawsuit is open when a section has already been ruled unlawful or when the constitutionality of any provision is being contested. If the claim is unquestionably made within the time frame established by the Limitation Act, a writ of certiorari may contain a directive for repayment; however, this is not a required remedy to take the place of a lawsuit.<sup>45</sup>
- f. A civil lawsuit is barred if the authorities' directives are deemed to be binding or there is an express restriction in the relevant Act, regardless of whether there are any questions regarding the accuracy of the assessment or its validity. In any scenario, it is necessary to review the particular Act's scheme because it is a pertinent question.<sup>46</sup>
- g. If none of the aforementioned circumstances hold true, it is difficult to conclude that the Civil Court's jurisdiction is excluded. In *Abdul Gafur v. State of Uttarakhand 2008 (10) SCC 97*<sup>47</sup>, in which the parties sought the assistance of the Civil Court, the Hon. Supreme Court made the observation that, in accordance with section 9 CPC, the Civil Courts have inherent jurisdiction over all types of civil disputes unless a portion of that jurisdiction is expressly or necessary impliedly subtracted by any statutory provision and granted to another Tribunal or Authority. Therefore, the law grants everyone the inherent right to file a civil lawsuit of their choosing, at their own risk, regardless of how meritless the claim may be.<sup>48</sup>
7. Presumption as to jurisdiction is as such that ,when determining whether a civil court has the authority to hear a case or not, it is important to keep in mind that there should always be a presumption in favour of the civil court's jurisdiction. Unless the relevant statute contains an express provision to that effect or results in a necessary and inevitable implication of the nature, the exclusion of jurisdiction of a civil court to entertain civil cases should not be easily inferred.<sup>49</sup>

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<sup>44</sup> Jabalpur Corp, (7977) 2 SCC 472; South Delhi Municipal Corp. v. Today Home infrastructure (P) Ltd., (2020)

<sup>45</sup> Dhulabhai v. State of M. P., AIR 1969 SC 78: (1968) 3 SCR 662

<sup>46</sup> Dhulabhai v. State of M. P., AIR 1969 SC 78: (1968) 3 SCR 662

<sup>47</sup> Abdul Gafur v. State of Uttarakhand 2008 (10) SCC 97

<sup>48</sup> Abdul Gafur v. State of Uttarakhand 2008 (10) SCC 97

<sup>49</sup> Abdul Gafur v. State of Uttarakhand 2008 (10) SCC 97