

PRESIDENT
Deepak Goradia

IMMEDIATE PAST PRESIDENT
Nayan A. Shah

PRESIDENT-ELECT
Boman Irani

SR. VICE PRESIDENTS
Harish Patel
Nainesh Shah
Domnic Romell
Bandish Ajmera

VICE PRESIDENTS
Sukhraj Nahar
Jayesh Shah
Ajay Ashar

HON. SECRETARY
Pritam Chivukula

TREASURER
Munish Doshi

SPECIAL PROJECTS
Parag Munot
Sandeep Raheja
Navin Makhija
Rasesh Kanakia
Shahid Balwa
Subodh Runwal

HON. JT. SECRETARIES
Shailesh G. Puranik
Dhaval Ajmera
Pratik Patel

JT. TREASURERS
Mukesh Patel
Tejas Vyas

CO-ORDINATORS
Nayan Bheda
Rajesh Prajapati
Dr. Harshul Savla

COMMITTEE MEMBERS
Gautam Ahuja
Deepak Gundecha

INVITEE MEMBERS
Shailesh Sanghvi
Sachin Mirani
Nikunj Sanghavi
Rajeev Jain
Shyamal Mody
Digant Parekh
Rushank Shah
Samyag Shah
Jayesh C. Shah
Sunny Bijlani
Sahil Parikh
Naman Shah
Ricardo Romell
Binitha Dalal

PAST PRESIDENTS
Mayur Shah
Dharmesh Jain
Vyomesh Shah
Paras Gundecha
Pravin Doshi
Mohan Deshmukh
Mofatraj Munot
Rajnikant Ajmera
Late G. L. Raheja
Late Lalit Gandhi
Late Babubhai Majethia

CREDAI-MCHI UNITS

PRESIDENT, THANE
Ajay Ashar

PRESIDENT, KALYAN DOMBIVLI
Shrikant Shitole

PRESIDENT, MIRA VIRAR CITY
Ashit Shah

PRESIDENT, RAIGAD
Kiran Bagad

PRESIDENT, NAVI MUMBAI
Vijay Lakhani

Ref. No. MCHI/PRES/20-21/019

September 26, 2020

To,
Hon'ble Shri Ravi Shankar Prasad,
Union Cabinet Minister,
Law & Justice, Communications and
Electronics and Information Technology
21, Mother Teresa Crescent,
New Delhi - 110011.

**Sub: Representation on the need for amendment to Order XIV Rule 2 of CPC for
early disposal**

Respected Sir,

The real estate sector has been reeling and under severe pressure since about 2018. The sector has also been subject of much critique in diverse litigation. However, what is required to be appreciated is that our members have been dragged into multifarious and motivated litigation with a view to delay projects or raising false threats.

Undue advantage is being taken by miscreants and mischievous elements of the already burdened legal system in India by the filing frivolous and motivated litigations, which are not only barred by jurisdiction but filed with an oblique motive of snatching orders and delaying hearings for decades. This is apart from the fact that they attempt to obtain some 'status-quo' reliefs in matters thereby stalling the development and construction of projects including housing projects. This is knowing fully well that a regular Suit takes upto 20 years to be decided and then the same is subject to further Appeals etc., therefore taking the average age of a Suit to about 35 years till a final conclusion is arrived at. Such miscreants after having negotiated a bargain with a Developer and after having entered into an Agreement for Sale for the land, choose to then file such motivated litigation with a view to then re-sell the same land to another person either for a better price or in order to somehow extort monies from the Developer.

This practice / mischief not only creates nuisance and wastes judicial time, but also stalls development / infrastructure projects for years which today are the need of our economy. There is thus an emergent need for an amendment to thwart, at the outset, dishonest litigation which will only enure to the benefit of the Developers, purchasers of Units in such projects, the general public at large but most importantly assist in the reduction of backlog of cases and the overall burden on the judicial system in India.

ORDER XIV Rule 2 of The Code of Civil Procedure, 1908

"[2. Court to pronounce judgment on all issues. - (1) ~~Notwithstanding that a 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) Notwithstanding anything contained in sub-clause (1) above or any other law for the time being in force, where at the hearing of any application for granting or setting aside

an order granting any interim relief in any suit, under Order 39 of the Code of Civil Procedure, 1908, issues both of law and of fact arise **on (a) & (b) below**; and on an application made by any party to the Suit or if the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law **and/or fact as the case may be including taking evidence if so required**, it shall proceed to determine and try that issue as to the jurisdiction as a preliminary issue if that issue relates to –

- (a) the jurisdiction of the Court (**including Resjudicata Benami Limitation etc.**) or
- (b) a bar to the suit created by any law for the time being in force including Benami, and for that purpose ~~shall may, if it thinks fit,~~ postpone the settlement of the other issues until after that issue has been determined, and ~~shall may~~ deal with the suit in accordance with the decision on that issue.]

GENESIS OF ORDER XIV

- a. Order XIV i.e. 'Settlement of Issues and Determination of Suit on Issues of Law or on Issues Agreed Upon' formed part of the Code of Civil Procedure, 1908 at the time of the enactment of the Code of Civil Procedure, 1908 i.e. March 21, 1908.
- b. Order XIV was inserted into the framework of the Code of Civil Procedure, 1909 after the provisions which dealt with the institution of a Suit and filing of a Suit i.e. (Order V read with Section 27) Issue and Service of Summons within 30 days from the date of institution of the Suit, (Order VIII) Filing the Written Statement within 30 days of service of the Summons on the Defendant. Today, Written Statements though required to be filed within a prescribed time frame are being filed beyond well beyond the said period; and in some instances even after almost after a decade or two decades as such Suits are mired within complexities of proceedings at the interim stage itself. It is in these circumstances, that there is today an emergent need and requirement at the interim stage to have a provision of law which tests the very maintainability of the Suit at the very threshold of its institution.
- c. The amendment provides for such protection i.e. determination of issues which go to the very root of the jurisdiction of a Court to try, dispose of and entertain a Suit such as a Suit being barred by Limitation, Res Judicata, or by statute such as the law on Benami; and require the same to be decided at a preliminary stage, even if the same would require evidence to be led. This will result in a preliminary inquiry by the Court and culminate in the dismissal of a Suit, if it found that the same is filed without jurisdiction or is barred by any law in force.
- d. The above amendment will ultimately lead to speedy disposal of cases, save considerable judicial time and resources; and reduce the mounting backlog of pending cases in India. In other words, the above amendment ensures that a Suit which is not maintainable for want of jurisdiction of a concerned Court or barred by legislature should not be tried on merits without first deciding the question of maintainability of the Suit or the statutory bar as a preliminary issue at the very threshold.

STAGE AT WHICH THE ABOVE AMENDMENT OPERATES

1. What is important to note in the above amendment is the stage at which the above amendment operates.
2. The above provision makes it clear that the stage for raising such preliminary issue of jurisdiction is the stage of hearing an application for grant of interim relief in a matter and not at the stage at which Order XIV itself operates (Order XIV - 'Settlement of Issues and Determination of Suit on Issues of Law or on Issues Agreed Upon'), inasmuch as that deciding / raising a preliminary issue of jurisdiction after the stage of 'Discovery and Inspection' (Order XI) or after stage of 'Production, Impounding and Return of Documents' (Order XIII) would defeat the very purpose and object of the above amendment i.e. to have Suits barred by jurisdiction dismissed at the very outset.

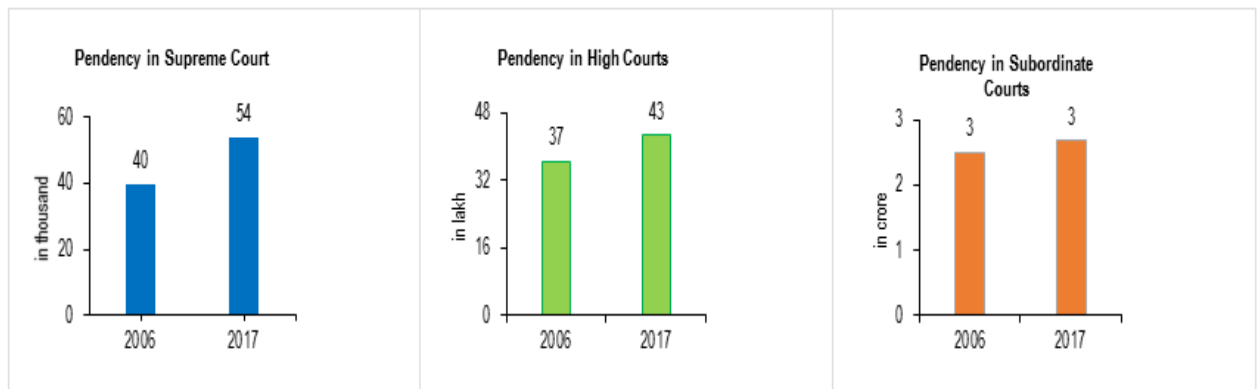
EASE OF DOING BUSINESS INDIA

3. Speedy disposal of high value commercial disputes would necessarily create a positive image to the investor world about the independent and responsive Indian Legal System, which would go a long way in encouraging domestic and foreign direct investment within and into the country by ensuring fair and quick dispute resolution of disputes. There has been much critique on the country's systematic backlog of cases and delays that clog up the judicial system.
4. The moto of the Government in India today is to enact new laws to safeguard foreign and domestic investment by speeding up dispute resolution with a view to attract more capital domestically and from overseas to boost domestic growth as one of the major issue for investors remains enforcement of contracts and speedy dispute resolution. The ease of doing Business Index is assessed by the World Bank based on 10 parameters and "Contract Enforcement" is one of them. However, the same is not possible unless through judicial and legislative activism laws are promogulated, enacted and enforced to ensure speedy disposal of cases in India to instil and boost investor confidence.
5. Though, the Commercial Courts Act 2015 has been enacted to ensure speedy disposal of "commercial matters", the same does not cover the entire gamut of litigation which itself can be disposed of in a speedy and fair manner with the coming into effect of the above amendment. For e.g. a dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2(1)(c) of the Act viz. "*the agreements relating to immovable property used exclusively in trade or commerce*". This does not cover matters / Suits involving family matters / land disputes, which take upto 20 years to be decided finally, which are then subject to further Appeals.
6. With the coming into effect of the above amendment, such matters will be disposed of within months, if it found that the same are without jurisdiction, instead of the said Suits taking almost 2 decades to be decided on the very same issue of jurisdiction. With the issue of jurisdiction (including limitation) in disputes involving land / development of land getting decided at the very outset within months, the same would boost and encourage businesses in India. The above amendment will improve India's image as an investment destination.

SPEEDY DISPOSAL OF CASES AND REDUCTION IN THE MOUNTING BACKLOG OF PENDING CASES

7. If the issue of jurisdiction is decided at the end of a Suit, after the trial on all issues, considerable judicial time, resources and effort will be wasted, a huge loss will be caused to the Defendant if it is ultimately found that the Suit was filed without jurisdiction and the same will also increase the backlog of cases in the country. Illustratively, a suit for specific performance on a contract for sale of land, if dishonestly filed after limitation has expired; is finally decided and dismissed after 20 years only to be subject to further Appeals for a further many years – this would result in a complete deprivation of justice to the Defendant apart from the time cost of money lost over 20 years.
8. A snapshot of statistics for the years 2016-2017 in relation to the increase in the number of pending cases in the various Courts in India is below¹ :

Pendency in courts has increased over the years; 86% of cases in the subordinate courts



9. Over 3.7 million, or around 10% of the 37.7 million cases pending before various High Courts, District and Taluka courts across India, have remained pending for over a decade, according to National Judicial Data Grid (NJDG). They include 2.8 million cases in District and Taluka courts and 920,000 cases before High courts. Over 660,000 cases have remained pending for over 20 years and 131,000 for more than three decades².
10. As of February 2020, nearly 46 lakh cases are pending before 25 High Courts in India and there were 59,867 cases pending before the Hon'ble Supreme Court of India. At the district and subordinate court levels, the number of pending cases stand at a shocking 3.19 crore.³
11. The object of the above amendment will be to weed out the suits which are filed in courts without jurisdiction and/ or were barred by any law in force at the very threshold so that the Defendants do not suffer an unnecessary trial or the travails and hardship.
12. This will also to a large extent curtail the practice of filing suits and obtaining orders / injunctions from courts having no jurisdiction or in cases hopelessly barred by the laws in force and free up the schedule of the Court.

¹<https://www.prsindia.org/policy/vital-stats/pendency-cases-judiciary>

²<https://www.hindustantimes.com/india-news/3-7-million-cases-pending-in-courts-for-over-10-years-data/story-yti7P0rm5Plwe5r8ubNVyJ.html>

³<https://www.deccanherald.com/national/nearly-46-lakh-cases-pending-in-high-courts-319-crore-in-lower-courts-805320.html>

13. The above amendment will overcome the mischief of Plaintiffs obtaining injunctions in matters where the Court admittedly did not have jurisdiction, and letting the Suit lie for years at end with a view to prejudice the Defendant. In time judicial precedent on the above law will discourage cases in future to be filed which are out of jurisdiction by errant litigants. This will help reduce a category of cases which lack bonafides and save the Court's time for more important cases.
14. This would ultimately lead to a reduction in frivolous litigations being filed before Courts without jurisdiction but also reduce the burden on an overburdened system with additional backlog of mischievous cases to vex innocent Defendants.
15. Defendant will be able to have suits disposed of quickly and expeditiously on the ground that the same are without jurisdiction or barred by any law for the time being in force; and safeguard themselves from being subjected to lengthy costly torturous trial to defend suits that are without jurisdiction or based on claims that are barred by any law for the time being in force.
16. Considerable and valuable judicial time and effort will be saved in several cases where it is found at the very outset that that the court does not have jurisdiction to hear a matter and same is dismissed on the preliminary issues framed. Today, a regular Suit takes upto 20 years to be decided and then the same is subject to further Appeals etc., therefore taking the average age of a Suit to about 35 years till a final conclusion is arrived at.

UNDUE ADVANTAGE BEING TAKEN OF LEGAL SYSTEM

17. Delay in justice denotes the time consumed in disposal of a case. The actual problem arises when the time taken for disposal exceeds the expected reasonable time to dispose of the case and get entangled in frivolous disputes / litigation which are hopelessly barred by jurisdiction. This not only results in disillusionment among the litigants but also undermines the effectiveness of justice delivery system in India.
18. It is because of this delay in the delivery of justice, that wrongful advantage is being taken of the justice system by miscreants. Illustratively, the Benami Transactions (Prohibition) Amendment Act, 2016 is becoming completely infructuous as people are enjoying the Benami Assets under the garb of the provisions of law.

MIS-CONCEPTION OF A "TWO-STAGE TRIAL"

19. It is also argued that it will envisage two trials viz. one at the Jurisdiction stage and one at the final hearing stage and take up the Court's time. This is clearly a mis-conception, inasmuch that with a minimal modicum of inquiry, the Court can determine the issue of maintainability of a Suit and dismiss Suits which are filed without jurisdiction and/or barred by jurisdiction at the very threshold. This practice will in turn result in laying down of binding precedents which will ultimately act as a preventive method to curb frivolous Suits being filed which are on the face of it not maintainable and barred by the jurisdiction and make way for the hearing of genuine cases which have been pending before Courts for decades.
20. This will therefore result in a situation where only those very limited cases which are genuine and where the Court actually does have jurisdiction to try, entertain and dispose of the Suit, shall proceed. This will result in saving of judicial time, judicial resources and eventually weed out frivolous and motivated litigation paving the way for a robust litigation system.

21. In addition to the above the Courts will also be able to implement existing laws in a timely manner so as to ensure speedy delivery of justice to parties.

CONSTITUTION BENCH'S DECISION ON JURISDICTION

22. The Constitution Bench of the Supreme Court in *Pandurang D. Chougule v. Maruti H. Jadhav* [AIR 1966 SC 153] has clearly held that:
- "It is well-settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings" and that*
 - "A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court.....";*
23. Therefore, the plea of limitation is a plea of law, which touches upon jurisdiction; therefore, if a suit is barred by limitation, the court cannot pronounce upon the merits. If a Court comes to a finding that it does not have jurisdiction vested in it in law to try, entertain and dispose of a Suit, then no further enquiry is needed; and this will eventually save a considerable amount of valuable judicial time and effort.
24. It is also trite law that the term jurisdiction is a term of art – it is an expression used in a variety of senses and draws colour from its context. The Hon'ble Supreme Court in the case of *National Thermal Power Corporation Ltd. vs. Siemens Atkeingesellschaft* [AIR 2007 SC 1491] has held that, *"The expression 'jurisdiction' is a word of many hues. Its colour is to be discerned from the setting in which it is used..."*.

MAKE ROBUST THE EXISTING SPECIAL STATUTES

25. It is not out of place to mention that though the Government has strengthened Acts such as Benami Transactions (Prohibition) Amendment Act, 2016, the said amendments are of little effect today. To have an immediate effect, such a law will be required so that wrongful party does not hide under Order 14 Rule 2 for decades, as the matter will only be heard in the final stage and enjoys a "Benami" asset for decades rendering the Act itself nugatory.
26. The idea and object of the above amendment is delivery of speedy justice and to reduce judicial delay due to frivolous litigation which take about 25years to be finally decided.

CONCLUSION

27. Therefore, in summary:
- the above amendment will act as a shield against the mis-use of the present judicial system by providing for a provision which enables Courts to test the maintainability of the Suit at the very threshold of its institution, so that frivolous and motivated litigated which is barred by jurisdiction is nipped in the bud at the very outset;
 - this will overcome the mischief of Plaintiffs obtaining injunctions in matters where the Court admittedly did not have jurisdiction, and letting the Suit lie for years at end with a view to prejudice the Defendant;
 - in time judicial precedent on the above law will discourage such types of cases in future to be filed which are out of jurisdiction by errant litigants;

- d. Evidence on jurisdiction at an ad-interim stage will tremendously save substantial time and efforts by the Hon'ble Courts which cases normally get prolonged endlessly for decades, as framing of issues and leading evidence on a multitude of issues which are unrelated to jurisdiction results in severe delay and a clogging of the entire judicial system.
- e. the above amendment will ultimately lead to speedy disposal of cases, save considerable judicial time and resources; and reduce the mounting backlog of pending cases in India; and
- f. there is today an emergent need and requirement to have such a provision in law on the statute books which in time will necessarily create a positive image to the investor world about the independent and responsive Indian Legal System which will improve and boost India's image as an investment destination.

Thanking you,

Yours Faithfully,
For CREDAI-MCHI



Deepak Goradia
President



Pritam Chivukula
Hon. Secretary