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To,  
Shri. Devendra Fadnavis,  
Hon'ble Deputy Chief Minister,  
Hon'ble Law Minister,  
Government of Maharashtra  
Mantralaya, Mumbai - 400 032.

21.11.22  
लिपिक  
उपमुख्यमंत्री एवं कार्यालय  
सहायक सचिव  
केंद्राध्यक्ष, मुंबई 400 032

Sub: Representation on requirement of clarification under Section 9A of CPC

Respected Sir,

We would like to highlight Section 9A of CPC was repealed vide First Amendment of Maharashtra Ordinance No. XVIII of 2018 dated 27<sup>th</sup> June, 2018 and the Second Amendment of Maharashtra Act No. LXXII of 2018 dated 15<sup>th</sup> December, 2018. However, there was a savings clause whereby consideration of matters/ Issues which have been framed under Section 9A of CPC shall continue under Section 9A of CPC such that the said Section has not been deleted.

We would like the following clarification that "Issues" framed under Section 9A covers all Issues - that fall under Jurisdiction which are taken as a "Preliminary Issue", whether they are those under "Law" or those which are also covered under "Law and/or Facts" as the case may be. The said Section 9A was specifically brought in the State of Maharashtra to cover all issues of Jurisdiction including Limitation, Benami, etc. that are required to be taken as a Preliminary Issue whereby evidence, if any, to be led is to be done. This law was brought in as Order XIV Rule 2 of the Code of Civil Procedure only covered issues of Jurisdiction which were limited to "Law" and did not cover issues related to "Law and/or Fact" to be determined as a Preliminary Issue.

MAHARASHTRA ACT No. LXI of 2018 dated 29<sup>th</sup> October, 2018.

3. Notwithstanding the deletion of Section 9A of principal Act:-

(1) Where consideration of preliminary issue framed under section 9A is pending on the date of commencement of the code of civil procedure (Maharashtra Amendment) Act, 2018 (hereinafter, in this section, referred to as "the Amendment Act"), 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 :

Provided that, the evidence, if any, led by any party or parties to the suit, 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

The original section 9A of the CPC as seen above always envisaged all issues of Jurisdiction to be decided as a preliminary issue, by way "Law and/or Fact" and the same can also be seen from the above proviso in the amendment which states: Provided that, the evidence, if any, led by any party or parties to the suit.

**Maharashtra Chamber of Housing Industry**

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Maharashtra Act No. LXXII of 2018 (First published, after having received the assent of the Governor in the "Maharashtra Government Gazette", on the 15<sup>th</sup> December, 2018) – An Act to amend the Code of Civil Procedure (Maharashtra Amendment) Act, 2018:

2. "In section 3 of the Code of Civil Procedure (Maharashtra Amendment) Act, 2018, for clause (1), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 27<sup>th</sup> June, 2018, being the date of commencement of the said Act, namely :-

"(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) Act, 2018 (hereinafter, in this section, referred to as "the Amendment Act"), the said issue shall be decided and disposed of by the Court under section 9A, as if the said section 9A has not been deleted."

From the above, it can be seen that even while repealing the said Act, **Evidence** was always a part of Section 9A and therefore, Issues pertaining to "Law and/or Fact" were always Issues of Jurisdiction to be decided as a Preliminary Issue under Section 9A.

Therefore, we seek your clarification for pending matters covered under the above two Amendments that **Section 9A was to cover all Issues of Jurisdiction including Limitation, Benami whether under "Law and/or Facts", as the case may be, as a Preliminary Issue.**

Thanking you for your continuous support.

Yours faithfully,  
For CREDAI-MCHI

  
Boman Irani  
President

  
Dhaval Ajmera  
Hon. Secretary