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Analysing developments impacting business

Objections to jurisdiction will no longer be decided as a preliminary issue

6 July 2018

The Governor of Maharashtra promulgated the Code of Civil Procedure (Maharashtra Amendment) Ordinance, 2018 (Ordinance) on 27 June 2018 to amend the Code of Civil Procedure, 1908 (Code) by deleting Section 9A of the Code in its application to the State of Maharashtra. The Ordinance proceeds to lay down the procedure by which matters pending under Section 9A of the Code are to be dealt with.

Introduction

Section 9A of the Code provides that at any hearing of an application for the grant or setting aside of an order granting interim relief in a suit, if an objection to the jurisdiction of the Court is taken by any of the parties to the suit, the Court is required to determine the issue of jurisdiction before granting or setting aside the order granting interim relief. This section was introduced in the State of Maharashtra and made applicable to with effect from December 1977.

Provisions of the Ordinance

The Ordinance deletes Section 9A of the Code in its application to the State of Maharashtra with immediate effect. Section 3 of the Ordinance goes on to lay down the following procedure for existing matters in relation to Section 9A –

Serial no	Matter Presently Pending	How to be dealt with post the Ordinance
1.	Where consideration of a preliminary issue framed under Section 9A is pending	<p>The preliminary issue under Section 9A shall be deemed to be an issue to be decided at the time of final disposal of the suit.</p> <p>Evidence led by parties on the issue framed under Section 9A shall be considered by the Court along with evidence led on other issues in the</p>

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		suit.
2.	Where a preliminary issue has been framed under Section 9A and the Court has decided that it has jurisdiction to entertain the suit and a challenge to this decision is pending before a revisional Court	The revision proceedings will stand abated.
3.	Where a preliminary issue has been framed under Section 9A and the Court has decided that it has jurisdiction to entertain the suit; and an appeal from a decree in such suit is pending	Continuation of the appeal before the Appellate Court. Any error, defect or irregularity in the order upholding jurisdiction shall be treated as one of the grounds of objection in the memorandum of appeal as if it was part of the memorandum of appeal.
4.	Where the Court has held that it has no jurisdiction while deciding a preliminary issue under Section 9A and a challenge to such decision is pending before an appellate or revisional court	The appeal or revisional proceedings shall continue irrespective of the Ordinance
5.	All cases where an order granting ad-interim relief has been passed by the Court in its power to grant interim relief as it considers necessary prior to determination of the preliminary issue of jurisdiction	Such order shall be deemed to be an ad-interim order under Order XXXIX of the Code. The Court may confirm, modify or vacate the ad-interim order at the final hearing of the interim application.

Comment

Section 9A was introduced with the intent to prevent plaintiffs from misusing the relaxation provided for in Section 80 of the Code which provides that no suit can be instituted against the Government without the expiry of 2 months' notice in writing, unless urgent / immediate relief is sought. In such cases, Courts would grant an ad-interim injunction and adjournment to the plaintiff. The plaintiff would then issue notice to the Government and after expiry of the time, the plaintiff would withdraw the suit, file a fresh suit and seek continuation of the ad-interim injunction granted earlier.

In reality, numerous anomalies were created by the introduction of Section 9A of the Code which resulted in pendency of interim applications causing the trial of suits to be deferred indefinitely. It was often noticed that unscrupulous defendants would object to jurisdiction simply to delay the trial of the suit and wear out the plaintiff.

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This is a welcome step by the Government in its effort to reduce the judicial backlog and streamline the trial of suits.

The intention of the Government in promulgating the Ordinance is reflected in the Statement appended to the Ordinance which refers to judicial decisions which lay down the procedure to be followed while deciding questions under Section 9A of the Code. The procedure to decide a Section 9A issue itself was cumbersome which resulted in significant delays. Numerous matters were stuck at the interim application stage with ad-interim relief remaining in place for several years till the question of jurisdiction was decided. Further, where questions of law and fact were to be answered in order to decide the preliminary issue of jurisdiction, the Court was required to conduct a trial to adjudicate the preliminary issue. Once the preliminary issue was decided in the affirmative, the Court would have to conduct another trial to actually adjudicate upon the dispute.

The Ordinance is likely to reduce a sizeable volume of existing interim applications before the Courts and hasten the trial and final adjudication of suits. This will benefit genuine litigants and speed up trials in all suits across Courts in the State of Maharashtra.

- Sachin Mandlik (Partner), Pranav Sampat (Principal Associate), Haabil Vahanvaty (Associate)

For any queries please contact: editors@khaitanco.com

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Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com