

# **INTERPRETING CONSTITUTIONAL ISSUES**

## **Constitutional Validity Legality of Legislation and Jurisdictional Bar of Civil Courts**

**Justice C.V. KARTHIKEYAN**

**Madras High Court**

**NJA**

**National Seminar on Constitutional and Administrative Law**

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# INTERPRETATION OF CONSTITUTION

- In ***State of Punjab v. Davinder Singh, (2020) 8 SCC 1***, a Constitution Bench observed as follows :

*“41. A constitutional court declares law as contained in the Constitution, but in doing so, it rightly reflects that a Constitution is a living and organic thing, which of all instruments has the greatest claim to be construed broadly and liberally as observed in **Goodyear (India) Ltd. v. State of Haryana, (1990) 2 SCC 71 : 1990 SCC (Tax) 223.**”*

## **SECTION 9 OF CPC**

- Section 9 CPC provides that a court has the authority to try all suits that are civil in nature except suits which are expressly or impliedly barred.
- Thus :
  1. The suit must be of civil nature.
  2. The Court should not have been expressly or impliedly barred from determining the issues.
  3. There must be a statutory alternative forum/tribunal/authority to determine such issues.

## ***Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393***

*“15. ....There is a basic distinction between the right of suit and the right of appeal. **There is an inherent right in every person to bring a suit of a civil nature** and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. **It is no answer to a suit,** howsoever frivolous to claim, **that the law confers no such right to sue.** A suit for its maintainability requires no authority of law and **it is enough that no statute bars the suit.** But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.”*

## ***Vishnu Dutt Sharma v. Daya Sapra, (2009) 13 SCC 729***

***“20. Any person may as of right have access to the courts of justice. Section 9 of the Code of Civil Procedure enables him to file a suit of civil nature excepting those, the cognizance whereof is expressly or by necessary implication barred. Order 7 Rule 11(d) is one of such provisions which provides for rejection of plaint, if it is barred by any law. Order 7 Rule 11(d) of the Code being one of the exceptions, thus, must be strictly construed.”***

***Nagri Pracharini Sabha v. Vth Addl. Distt. and Sessions  
Judge, 1991 Supp (2) SCC 36***

***“2. A litigant having a grievance of a civil nature has, independently of any statute, a right to institute a suit in the civil court unless its cognizance is either expressly or impliedly barred. The position is well settled that exclusion of jurisdiction of the civil court is not to be readily inferred and such exclusion must be either express or implied.”***

# ***Dhulabhai v. State of M.P., (1968) 3 SCR 662 : AIR 1969 SC 78 : 22 STC 416.***

**35....** *The result of this inquiry into the diverse views expressed in this Court may be stated as follows:*

- (1)** *Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit.* Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.
- (2)** *Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.*

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that **all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.**

**(3)** Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

**(4)** When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.



*(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegality collected a suit lies.*

*(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and **a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act.** In either case the scheme of the particular Act must be examined because it is a relevant enquiry.*

*(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.*

# ***Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd., (2023) 1 SCC 1***

**“56.** *In view of the discussion aforesaid, the questions framed above are to be answered as under:*

*(c) Is the jurisdiction of a civil court to try a suit filed by a borrower against a bank or financial institution ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt by a bank or financial institution?*

*The aforesaid question ought to be answered first and is answered in the negative.*

*(a) Whether an independent suit filed by a borrower against a bank or financial institution, which has applied for recovery of its loan against the plaintiff under the RDB Act, is liable to be transferred and tried along with the application under the RDB Act by DRT?*

*In the absence of any such power existing in the civil court, an independent suit filed by the borrower against the Bank or financial institution cannot be transferred to be tried along with application under the RDB Act, as it is a matter of option of the defendant in the claim under the RDB Act. However, the proceedings under the RDB Act will not be impeded in any manner by filing of a separate suit before the civil court.*

*(b) If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the plaintiff?*

*Since there is no such power with the civil court, there is no question of transfer of the suit whether by consent or otherwise.”*

**SECTION 113 CPC and ARTICLE 228 of CONSTITUTION**  
***Raja Ganga Pratap Singh v. Allahabad Bank Ltd.,***  
**AIR 1958 SC 293**

*“5.It seems clear to us **that the question raised by the appellant in this case comes within the proviso to Section 113 of the Code as also Article 228 of the Constitution.** The question contemplated by the proviso to Section 113 of the Code is as to the validity of an Act or of a provision in it while Article 228 of the Constitution has in view a question as to the interpretation of the Constitution. Now **the question raised in the present case is as to the validity of a provision in the Zamindar's Debt Reduction Act. This question is, however, also a question as to the interpretation of the Constitution, for the validity of the provision is challenged on the ground that it contravenes an article of the Constitution.**”*

# ***Municipal Corpn., Ahmedabad v. Shivshanker Gaurishanker Mehta, (1998) 9 SCC 197***

***3.Learned City Civil Court .. framed two points for decision of the High Court and made them the subject-matter of the reference under Section 113 read with Order 46 CPC as noted earlier. These two questions referred for decision of the High Court read as under:***

- (i) Are not the provisions of Section 212 of the Bombay Provincial Municipal Corporation Act ultra vires Article 14 of the Constitution of India insofar as the said provisions provide due opportunity of being heard to the owners of buildings whereas it does not provide such opportunity to tenants occupying the said buildings, falling within the*

*regular line of street in this context, are not the owners as also the tenants of such buildings, quite alike and yet differentially treated by the said section, without any intangible differentia?*

*(ii) Is not Section 213 of the Bombay Provincial Municipal Corporation Act liable to be struck down on the ground that it is violative of the fundamental principles of natural justice, viz., audi alteram partem insofar as before asking the owner/occupant of the land to hand over possession thereof to the Municipal Commissioner, it does not provide an opportunity to such occupant/owner to show cause why the roadline earlier prescribed may not be implemented and why the land in his ownership/occupation acquired?”*

***S. Maruthamuthu Naicker vs P. Kadir Badsha Rowther & oths***  
***AIR 1938 Mad 377 (FB)***

- *This is a reference under Order XLYI, rule 1, of the Code of Civil Procedure, by the Subordinate Judge of Tanjore in a suit on a promissory note. **The note was executed by the first and second defendants** in favour of one Ponnuswami Naicker who indorsed it to the plaintiff. **The two sons of the second defendant who constitute with him an undivided family have been made defendants**, as it is sought to make them liable on the ground that the debt was incurred for family purposes by the second defendant in his capacity of managing member. The sons, having raised the plea that the plaintiff as the indorsee is not entitled to sue them on the strength of the indorsement of the instrument, the Subordinate Judge has referred to us this question:—*
- *“Whether an indorsee of a promissory note executed by the managing member is entitled to recover the debt from the property of the non-executant coparceners on the ground of their liability under the Hindu law or whether he is limited to the remedy available on the note.”*

***Fatima-Ul-Hasna & oths vs Baldeo Sahai & oths***  
***AIR 1926 All 204 (2)***

*“Ordinarily, when there has been a clear pronouncement by a High Court which has not been subsequently doubted the Sub-ordinate courts are bound to follow if. **But this is not necessarily so in the case of a ruling which has been doubted within the High Court itself and dissented from by other High Courts.** In such a case a Sub-ordinate court may be justified in making a reference under order XLVI of the Code of Civil Procedure.”*



**A Sreenivasa Rao and Ors v. Govt of Andhra Pradesh, 2002 (4) ALD 881, 2002 (4) ALT 475**

*A Division Bench of the Andhra Pradesh High Court held that a District court is not empowered and entitled to decide the validity of any Act, Ordinance or Regulation. Section 113 CPC makes it mandatory for the District court to refer the pending case to the High Court for determining the question relating to the validity of an Act, Ordinance or Regulation which is necessary for the case to be disposed of by stating its reasons and opinions for referring the case to the High Court for its opinion.*

# Effect of Reference

- In **L.S Sherlekar v. D.L. Agarwal**, **AIR 1968 Bom 439**, a Division Bench of the Bombay High Court held that when the reference is sought from the High Court and the decree is confirmed if the High Court answers the question in favor of the plaintiff. If the answer of the High Court is against him, the suit is dismissed.
- **Rule 3 of Order 46** states that after hearing the parties if the High Court desires, it shall decide the referred point and transmit a copy of its judgment to the referring court, which shall dispose of the case in accordance with the said decision.

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