

SUPREME COURT OF INDIA

Foreshore Co-Op.Hng.Society Ltd.

Vs.

Praveen D Desai (D) Thr.Lrs.

C.A.No.7732 of 2011

(M.Y.Eqbal and Kurian Joseph JJ.)

08.04.2015

JUDGMENT

M. Y. EQBAL, J.

1. Leave granted.

2. In these appeals question has been raised about the ambit and scope of Section 9A CPC as inserted by the Code of Civil Procedure (Maharashtra Amendment) Act 1977 vis--vis the provision of Order XIV Rule 2 of the Code of Civil Procedure. Before advertng to the legal question, it would be proper to mention the nature of the orders passed by the Bombay High Court in these appeals.

3. In Civil Appeal No. 7732 of 2011 (Foreshore Co-operative Housing Society Limited vs. Praveen D. Desai (Dead) thr. Lrs. and others) the Division Bench of the Bombay High Court upheld the order of the learned Single Judge dismissing the appellant's suit on the ground that the suit was barred by limitation. In Civil Appeal No.5514 of 2012, the appellants are aggrieved by the impugned Order dated 15.3.2012, whereby the Division Bench refused to interfere with order dated 24.1.2011 passed by the learned Single Judge in Notice of Motion No.3616 of 2010 in Suit No.2901 of 2010. The Notice of Motion was taken out by the plaintiffs seeking certain interim reliefs pending hearing of the suit. The learned Single Judge by the said order directed the defendants to file reply to the Notice of Motion and also directed that the Notice of Motion itself be placed for final hearing. Grievance of the plaintiffs before the Division Bench was that the learned Single Judge has declined to pass any ad-interim order in favour of the plaintiffs-appellants without giving any reason for doing so. The Division Bench noticed that

the defendant-respondents had raised objection to the maintainability of the suit itself as also on the question whether the suit is filed within the period of limitation. In Civil Appeal No.5515 of 2012, the appellants are aggrieved by the order passed by the learned Single Judge whereby the prayer for grant of ad-interim relief was declined pending hearing on the preliminary issue raised by the defendants under Section 9A, CPC, till the jurisdiction of the court to entertain the suit is decided. The Division Bench in the matter of Nusli Neville Wadia (Civil Appeal arising out of SLP(C) No.24880/2012) set aside the judgment of the learned Single Judge and directed inter alia that the issue "Whether the claim of the Plaintiff in the suit is barred by limitation" be raised under Section 9A and tried as a preliminary issue. Whereas while dealing with the appeal against the order of learned Single Judge framing a preliminary issue under Section 9A with regard to limitation and decided to try it as preliminary issue, the Division Bench in the matter of Punam Co-operative Housing Society (Civil Appeal arising out of SLP(C) No.2989/2012) upheld decision of the Single Judge. In the matter of Sou. Rama Vijay Kumar Oberoi (Civil Appeal arising out of SLP(C)Nos.16373-16375/2013), the defendant raised an objection that the suit was barred by limitation, the trial court held that the issue of limitation being a mixed question of fact and law could not be framed as a preliminary issue under Section 9A, CPC. In appeal, learned Single Judge of the High Court in the impugned order directed the trial court to frame a preliminary issue under Section 9A as to whether the suit was barred by limitation.

4. Since the question of law in all these appeals is similar, we would like to narrate the factual matrix of the case pertaining to Civil Appeal No.7732 of 2011 (Foreshore Co-operative Housing Society Ltd.) which relates to the rights enjoyed by the parties therein over the suit property. The Appellant is a co-operative housing society consisting of owners of various flats in the building 'Advent' which exists on the suit property. The Appellant filed Suit No.2939/1999 for declaring that Respondent Nos.1-6 and 8 have no rights whatsoever over the suit property and that they were not entitled to carry out construction of the building by name of 'Divya Prabha' within the suit property and for permanently restraining them from doing so. The Appellant also prayed for declaring the revalidation of the I.O.D. (Intimation of Disapproval) and commencement certificate by Respondent No. 7 - Municipal Corporation in 1998, 2004 and 2005 in favour of Respondent Nos. 1-6 and 8 to carry out construction of the building by name of 'Divya Prabha' in the suit property to be illegal.

5. The suit property was originally leased to the Golwals. In 1958, the Golwals entered into an agreement dated 17.03.1958 granting development rights over a

portion of the suit property to Respondent No.1 and also executed a Power of Attorney in his favour. Respondent No. 1 in turn transferred these rights in favour of his company-Respondent No. 2 vide agreement dated 23.10.1959. Respondent Nos. 1 and 2 constructed the building 'Advent' whose flat owners are the members of the Appellant Society. The Municipal Corporation granted I. O. D. and commencement certificate to Respondent No.1 in 1966 for constructing a building by the name of 'Divya Prabha' in the suit property. In 1968, the Municipal Corporation issued notices for stopping the construction of 'Divya Prabha' on account of irregularities therein. Respondent No. 1 filed a suit challenging these notices, however after the plaint was returned for presentation before the proper court, the same was not pursued.

6. In 1968-69, disputes arose between the Golwals and Respondent Nos. 1 and 2 in relation to the land development agreement and the Power of Attorney executed in favour of Respondent No. 1 was revoked. The Golwals then assigned their entire leasehold interest in favour of the Appellant society vide agreement dated 25.03.1969 and the Appellant was confirmed as the lawful assignee by the Municipal Corporation.

7. The Appellant pleaded that in 1987, Respondent No.3 entered into the suit property and began carrying out construction of 'Divya Prabha' on the basis of an agreement purported to have been executed by Respondent Nos.1 and 2 in his favour in 1980 and on the basis of the agreement and power of attorney purported to have been executed in his favour by Golwala in 1984 and 1986 respectively. The Corporation is said to have issued a notice in 1987 to Respondent No. 3 to stop the construction and a suit challenging the same was filed by Respondent No. 3. The Appellant further pleaded that Respondent Nos.1-6 had executed a deed of assignment dated 14.10.1994 in favour of Respondent No. 8 selling the suit property and the building 'Divya Prabha' to the latter.

8. The Appellant filed Suit No. 6734/1994 in October, 1994 before the City Civil Court for declaring that Respondent Nos. 1-6 and 8 have no rights over the suit property, that they were not entitled to carry out construction within the suit property and for declaring that the revalidations of I. O. D. and the commencement certificate were illegal. On 28.06.1996, the validity of the I. O. D. and the commencement certificate of 1966 were extended till 19.06.1997 and the suit was amended to challenge the same. When the validity of the I.O.D. and commencement certificate expired, learned Single Judge of the High Court permitted Respondent Nos. 1- 6 and 8 to apply again for revalidation and directed them to communicate any such order to the Appellant. Respondent No. 8 was

alleged to have forcibly entered into the suit property on various occasions in 1998 and begun construction of 'Divya Prabha' without informing the Appellant of any grant of permission whereupon the Appellant filed a suit for injunction.

9. Revalidation certificates dated 18.09.1998 and 05.10.1998 were issued in relation to the I. O. D. and the commencement certificate, and the Appellant amended the plaint to challenge the same. However, by an order dated 16.04.1999, the plaint in Suit No. 6734/1994 was returned for presentation before the proper court as it was improperly valued and exceeded the jurisdiction of the City Civil Court. The Appellants filed an appeal against the said order, but afterwards withdrew it. In 1999, Appellant then filed a suit being Suit No. 2939/1999 before the Single Judge of the High Court, which was amended to challenge the revalidation certificates granted on 08.03.2004, 09.03.2004, 08.07.2004 and on 06.08.2005 during the pendency of the suit. This suit was also permitted to be amended in 2005 for incorporating pleadings to the effect that Suit No. 6734/1994 was filed and prosecuted before the City Civil Court in good faith and with due diligence.

10. The Appellant filed Notice of Motion for grant of injunction and Respondent No. 8 raised preliminary objections regarding the maintainability of the suit. Learned Single Judge noted that Section 9A of the Code of Civil Procedure provides for hearing an objection regarding the jurisdiction of the court to entertain a suit as a preliminary issue when such objection is raised in an application for grant of interim relief. In view of the same, learned Single Judge framed a preliminary issue as to whether Suit No.2939/1994 was barred by limitation or not. Learned Single Judge held that though the matter in issue in Suit No.6734/1994 and Suit No.2939/1999 was the same, the Appellant was not entitled to the benefit under Section 14 of the Limitation Act as it had failed to prove that the earlier suit was pursued with due diligence and good faith. Learned Single Judge noted that the plaint initially did not have any pleadings for availing the benefit under Section 14 of the Limitation Act and that the same was incorporated by way of an amendment in 2005 after the reply to the notice of motion was filed and preliminary issue regarding jurisdiction was framed. The Appellant was required to prove not only the diligent prosecution of Suit No. 6734/1994 but also its diligent institution and the Single Judge held that the Appellant had failed to do so having been unable to show that the said suit was incorrectly valued despite due care and caution. The Appellant was also held to have not cited any particulars or evidence for having pursued the earlier suit in good faith. Learned Single Judge dismissed the suit as barred by limitation vide judgment dated 20.01.2006.

11. Aggrieved by the judgment of the Single Judge, Appellant filed an appeal before the Division Bench of the High Court. The Appellant pleaded that the bar of limitation was not a bar on the jurisdiction of the court and that the question of limitation was a question of law and fact which had to be decided along with the other issues in the suit. The Appellant also contended that it was entitled to the benefit under Section 14 of the Limitation Act, 1963 and that even assuming that it was not so entitled, the suit would still be within the period of limitation as the cause of action arose when the I. O. D. and the commencement certificate were revalidated on 18.09.1998 and 05.10.1998 and when the Respondents trespassed into the suit property on various occasions in 1998.

12. After hearing learned counsel on either side, the Division Bench held that the moment the issue of jurisdiction was raised under Section 9A of Code of Civil Procedure, such issue had to be decided first as the same was mandated under Section 9A and as valuable time could be saved in case it is found that the court does not have jurisdiction. The term "jurisdiction" under Section 9A was held to have been used in a wider sense and subject to any statutory bar on the maintainability of a suit. The Division Bench held that the court was bound to dismiss a suit barred by limitation as it had no jurisdiction to entertain the same. The plea of limitation was held to be a question of law which related to the jurisdiction of the court and the court was held to be precluded from adjudicating the matter on merits when the suit was barred by limitation. The Division Bench went on to hold that the suit herein, which was filed on 18.05.1999, was barred by limitation as the cause of action arose in April, 1994. The view of the Single Judge that the plaint initially did not have any pleadings for availing the benefit under Section 14 of the Limitation Act and that the same was incorporated by way of an amendment in 2005 was upheld. The Division Bench held that the Appellant was not entitled to the benefit under Section 14 of the Limitation Act as there was no proof of the earlier suit having been prosecuted with due diligence and good faith and dismissed the appeal vide the impugned judgment.

13. Hence, the present appeals by special leave by the appellants.

14. We have heard Mr. F.S. Nariman, Mr. P. Chidambaram, Mr. Shekhar Naphade, Mr. Jaideep Gupta, learned senior advocates appearing on behalf of the appellants. We have also heard Mr. Kapil Sibal, Mr. Salman Khurshid, Dr. A.M. Singhvi, Mr. Ashwini Kumar, Mr. A. Sharan, Mr. Shyam Divan and other learned senior counsel appearing for the respondents.

15. At the very outset, Mr. Nariman drew our attention to the aim and object of bringing Section 9A by Maharashtra Amendment in the Code of Civil Procedure. According to the learned senior counsel, Maharashtra Legislature used the word 'jurisdiction' in all matters concerning jurisdiction, i.e. the pecuniary or territorial, notwithstanding that in Order XIV Rule 2 preliminary issue is to be raised only when it is of law. It cannot be raised when the issue of jurisdiction is a mixed issue of law and fact. According to Mr. Nariman, 'jurisdiction' used in Section 9A is confined to its textual interpretation i.e., any plea as to the jurisdiction of the court with reference to the subject matter, territorial or pecuniary jurisdiction, which ousts the jurisdiction of the court. Mr. Nariman submitted that initially Section 9A was enacted by Maharashtra Amendment Act of 1969 because of judgments rendered by the Bombay High Court. It was only for the purpose of deciding objections as to the jurisdiction either territorial or pecuniary, Section 9A was inserted. Learned senior counsel submitted that since the date of enactment of Section 9A in 1970 the questions of territorial and pecuniary jurisdiction have been decided. Mr. Nariman then referring the decision of this Court in the case of *Mathai vs. Varkey Varkey*, (1964) 1 SCR 495, submitted that a court having jurisdiction over the subject matter of the suit and over the parties thereto, though bound to decide right may decide wrong, and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. In other words, courts having jurisdiction to decide right or to decide wrong and even though decide wrong, the decree rendered by them cannot be treated as nullity. The gist of the argument of Mr. Nariman and other counsel is that a preliminary objection as to jurisdiction under Section 9A would not include an objection that it is barred by limitation. Learned counsel put heavy reliance on the decision of this Court in *Ramesh B. Desai and Ors. vs. Bipin Vadilal Mehta and Ors.*, (2006) 5 SCC 638.

16. Per contra, Mr. Kapil Sibal, learned senior counsel appearing for the respondents submitted that the application of Section 9A comes at the very initial stage of the suit whereas the provision of Order XIV Rule 2 can be invoked at the time of framing of issues. Learned counsel submitted that no prejudice would be caused inasmuch as the Court may in its discretion refuse to hear the preliminary issue. According to the learned counsel, question of limitation concerns the jurisdiction of the Court as the limitation goes to the root of jurisdiction. Mr. Sibal, relied upon a three Judges Bench decision of this Court in *Official Trustee W.B. vs. Sachindra* (1969) SC 823, *National Thermal Power Corporation Ltd. vs. Siemens Atkeingesellschaft*, (2007) 4 SCC 451.

17. Dr. A.M. Singhvi submitted that insertion of Section 9A by Maharashtra Amendment is a legislative policy decision of the State to entertain objection to

jurisdiction at the initial stage and to decide it as preliminary issue. According to the learned counsel, the question of limitation is the question of jurisdiction and it has to be decided as a preliminary issue. Learned counsel put reliance on ITW Signode India Ltd vs. Collector of Central Excise, (2004) 3 SCC 48; Manick Chandra Nandy vs. Debdas Nandy and Others, (1986) 1 SCC 512; Kamlesh Babu and Others vs. Lajpat Rai Sharma and Others, (2008) 12 SCC 577.

18. We have also heard Mr. Salman Khurshid and Mr. Ashwani Kumar, learned senior advocates appearing for the respondents. The submissions of learned counsel are as under:-

The juridical and jurisprudential meaning of the term "jurisdiction" as used inter-alia in Section 9A of the CPC (as amended in 1977), and by virtue of Order XIV Rule 2 (b) initially interpreted in a catena of judgments, cannot be limited in its sweep to exclude a case where the suit/any part of the alleged cause of action is barred by limitation. Section 9A provides a self contained scheme and given its non-obstante clause, must prevail.

A plea pertaining to the bar of limitation has been consistently held by the Supreme Court and followed by High Courts, as one giving rise to the issue of jurisdiction. An issue of limitation refers to a statutory bar to the exercise of jurisdiction.

19. Learned counsel further submitted that upon a harmonious construction of the two provisions and considering the consistent judicial dicta whereby an issue of limitation is treated as a jurisdictional issue, Clauses (a) and (b) of Rule 2(2), Order XIV of the CPC ought to be read as jurisdictional issues although arising under different pleas.

20. Learned counsel further submitted that even otherwise the non- obstante clause inserted by the Maharashtra Amendment of 1977 in Section 9A of CPC and the express mandate of Section which is a self-contained scheme and a later expression of legislative intent, the policy and intention of the law is to decide an issue relating to jurisdiction of the court, on whatever grounds raised, as a preliminary issue, notwithstanding of any other provision in the CPC. Such an issue is to be decided at the hearing under Section 9A when the court is not precluded from considering the facts either on prima facie basis or otherwise.

21. Learned counsel also referred a catena of decisions for the proposition that question of limitation concerns the jurisdiction of court and such issue goes to the root of jurisdiction and may oust the jurisdiction of the court.

22. Similar argument have been advanced by Mr. Shyam Divan and other learned senior counsel appearing for the respondents.

23. Section 9 of the Code of Civil Procedure confers power and jurisdiction to Courts to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. For better clarification, Explanations (I) and (II) have been added. Section 9 with explanations reads as under:-

"9. Courts to try all civil suits unless barred:- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all Suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I.-As suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II-For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place."

24. A bare reading of the aforesaid provision would show that all suits of civil nature can be entertained by civil Courts. However, Explanation (I) clarifies as to what a suit of a civil nature is.

25. Immediately, after Section 9, Section 9A was inserted by Code of Civil Procedure (Maharashtra Amendment) Act, 1970. Section 9A as inserted in the Code of Civil Procedure (Maharashtra Amendment) Act of 1970 reads as follows:-

"9A. Where by an application for interim relief is sought or is sought to be set aside in any suit and objection to jurisdiction is taken, such issue to be decided by the Court as preliminary issue at hearing of the application.

If, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of injunction, appointment of a receiver or otherwise, made in any suit, an objection for the jurisdiction of

the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction."

26. In the year 1976, the Code of Civil Procedure 1908 was extensively amended by the Code of Civil Procedure (Amendment) Act, 1976. Section 97 of the Amendment Act of 1976 inter alia provided that any amendment made in the Code by the State Legislature before commencement of the Amendment Act of 1976 shall, except insofar as they are consistent with the Code as amended by the Amendment Act, 1976 shall stand repealed. As a result, those amendments made in the CPC by the State Legislature which were inconsistent with the amendments brought in 1976 stood repealed.

27. After the aforesaid Section 9A of Maharashtra Amendment stood repealed, the State Legislature felt that certain amendments made by the Maharashtra State Amendment Act were useful and required to be continued. Hence, the State Legislature of Maharashtra re-enacted Section 9A with the assent of the President of India as required under Article 254(2) of the Constitution of India, so that the same may continue to prevail. Hence, by Section 3 of Maharashtra (Amendment) Act of 1976, it again inserted Section 9A in the Code of Civil Procedure. Section 9A which has been inserted in the 1977 by the State Legislature reads as under:-

"9-A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.- (1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the

interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in Sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to be jurisdiction."

28. As noticed above, Section 9A was for the first time inserted by Amendment Act of 1970. The statement of objects and reasons for such amendment is quoted hereunder:-

"The effect of the judgment of the High Court in *Institute Indo-Portuguese vs. Borges* (1958) 60 Bom. L.R. 660 is that the Bombay City Civil Court for the purposes of granting interim relief cannot or need not go into the question of jurisdiction. Sometimes declaratory suits are filed in the City Court without a valid notice under section 80 of the Code of Civil Procedure, 1908. Relying upon another judgment of the High Court recorded on the 7th September, 1961 in Appeal No.191 of 1960, it has been the practice of the City Court to adjourn a notice of motion for injunction in a suit filed without such valid notice, which gives time to the plaintiff to give the notice. After expiry of the period of notice, the plaintiff is allowed to withdraw the suit with liberty to file a fresh one. In the intervening period, the Court grants an ad interim injunction and continues the same. The practice of granting injunctions, without going into the question of jurisdiction even though raised, has led to grave abuse. It is therefore, proposed to provide that if a question of jurisdiction is raised at the hearing of any application for granting or setting aside an order granting an interim relief, the Court shall determine that question first."

29. For the purpose of re-inserting Section 9A in 1977, after Section 9A stood repealed by 1976 CPC Amendment Act, the statement of objects and reasons of the relevant portion of said Bill is extracted hereinbelow:-

"2. The Code has now been extensively amended by the Code of Civil Procedure (Amendment) Act, 1976 (CIV of 1976) enacted by Parliament. Section 97 of the Amendment Act provides inter alia that any amendment made in the Code by a State Legislature before the commencement of the Act shall except in so far as they are consistent with the Code as amended by

the Amendment Act, stand repealed. Unless there is an authoritative judicial pronouncement, it is difficult to say which of the State Amendments are inconsistent with the Code as amended by the Central Amendment Act of 1976 and which consequently stand repealed. All the amendments made in the Code by the State Acts, except the amendment made in the proviso to section 60(1) by the State Act of 1948, have been found to be useful and are required to be continued. The amendment made by the State Act of 1948 is no more required because it is now covered by the amendment made in clause

(g) of the said proviso by the Central Amendment Act of 1976. But to leave no room for any doubt whether the remaining State amendments continue to be in force or stand repealed, it is proposed that the old amendments should be repealed formally and in their places similar amendments may be re-enacted, with the assent of the president under article 254(2) of the Constitution, so that they may continue to prevail and be available in this State as before. The Bill is intended to achieve these objects.

3. The following notes on clauses explain the purposes of these clauses:-

Preamble - it gives the background and main reasons for the proposed legislation.

Clauses 2 and 3-Clause 2 formally repeals the State Act of 1970 and the new section 9A inserted by it, to make way for re-enacting by clause 3 of the same section in a slightly revised form."

30. The question that arises for consideration before this Court is as to whether the phrase "an objection to the jurisdiction of the Court to entertain such a suit" as used in Section 9A of the Maharashtra Manual would include an objection with regard to limitation. In other words, whether an issue relating to a bar to the suit created by law of limitation can be tried as preliminary issue under Section 9A of the Code.

31. For better appreciation of the object and interpretation of Section 9A, it would be proper to have a comparison with the provision contained in Order XIV Rule 2 of the Code of Civil Procedure. Rule 2 of Order XIV reads as under:-

"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) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

32. Order XIV Rule 2 of the Code of Civil Procedure, confers power upon the Court to pronounce judgment on all the issues. But there is an exception to that general Rule i.e., where issues both of law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on the issue of law, it may try that issue first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law.

33. Order XIV Rule 2 of the Code of Civil Procedure as it existed earlier reads as under:-

"Issues of law and of fact:

Whether issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be "disposed of on the issues of law only, it shall try those issues first and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined".

34. A comparative reading of the said provision as it existed earlier to the amendment and the one after amendment would clearly indicate that the consideration of an issue and its disposal as preliminary issue has now been made permissible only in limited cases. In the un-amended Code, the categorization was only between issues of law and of fact and it was mandatory for the Court to try the issues of law in the first instance and to postpone the settlement of issues of fact until after the issues of law had been determined. On the other hand, in the amended provision there is a mandate to the Court that notwithstanding that a case

may be disposed of on a preliminary issue, the Court has to pronounce judgment on all the issues. The only exception to this is contained in sub-rule (2). This sub-rule relaxes the mandate to a limited extent by conferring discretion upon the Court that if the Court is of opinion that the case or any part thereof may be disposed of "on an issue of law only", it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the Court or a bar to the suit created by a law in force.

35. The moot question, therefore, that falls for consideration is as to whether courts shall be guided by the provisions of Order XIV Rule 2 of the Code of Civil Procedure or Section 9A of the Code as amended by Maharashtra Amendment Act, in the matter of deciding the objection with regard to jurisdiction of the court which concerns the bar of limitation as a preliminary issue.

36. Indisputably, the subject of Civil Procedure, including all matters included in the Code of Civil Procedure, is placed under Entry 13 in the Concurrent List of the VII Schedule appended to the Constitution of India. After Section 9A of Maharashtra Amendment Act stood repealed by Section 97 of the CPC Amendment Act of 1976 being inconsistent with the Code, the State Legislature of Maharashtra felt that certain amendments made by the earlier State Amendment Acts were useful and required to be continued. To leave no room for confusion as to whether the State Amendments continued to be in force or repealed, Section 9A was again re-enacted with the assent of the President of India under Article 254 (2) of the Constitution of India.

37. As noticed above, Section 9A of the Maharashtra Amendment Act is a complete departure from the procedure provided under Order XIV Rule 2 of the Code of Civil Procedure. Notwithstanding the inconsistency contained in the Act of the Parliament viz., the Code of Civil Procedure and the provisions contained in Section 9A of the State Act, having regard to the fact that the assent of the President was received, the provisions of the said Section has to be complied with and can be held to be a valid legislation.

38. In the case of Meher Singh vs. Deepak Sawhny, reported in 1998 (3) MhLJ 940 = 1999 (1) Bom CR 107, the question that referred to the Division Bench for its consideration was whether while deciding the preliminary issue of jurisdiction as contemplated under Section 9-A of the Code Civil Procedure (Maharashtra Amendment) Act, 1977 the parties are required to be given opportunity to lead evidence?. The Division Bench noticed that Section 9-A was added to the Civil Procedure Code by Code of Civil Procedure (Maharashtra Amendment) Act, 1977.

As per the amended provision if in a suit, an objection to the jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Before the learned Single Judge, it was contended that when the said issue is raised for determination, the Court is required to permit the parties to lead evidence. The Division Bench considered the amended provision as contained in Section 9-A vis-a-vis Order XIV Rule 2 of the Code of Civil Procedure and observed:- "13. In the result we hold that if Section 9-A is not added, then at interim stage, the Court is not required to decide the issue of jurisdiction finally and the Court by referring to the averments made in the plaint, would ordinarily determine whether or not the Court has jurisdiction to try the suit. However, it is apparent that section 9-A is added with a specific object to see that objection with regard to jurisdiction of the Court is decided as a preliminary issue. According to the Legislature, the practice of granting injunctions without going into the question of jurisdiction even though raised, has led to grave abuse. Hence the said section is added to see that issue of jurisdiction is decided as a preliminary issue notwithstanding anything contained in the Civil Procedure Code, including Order XIV, Rule 2. Once the issue is to be decided by raising it as a preliminary issue, it is required to be determined after proper adjudication. Adjudication would require giving of opportunity to the parties to lead evidence, if required."

39. From the statement of objects and reasons it is evident that the practice followed in the City Civil Court in filing the suits against the Government without giving notice under Section 80 of the CPC and after the interim relief continued the plaintiff takes permission to withdraw the suit and to file a fresh suit. As a matter of fact, the legislature intended to stop this abuse of process by introducing Section 9A in the CPC by Maharashtra amendment Act. By reason of such amendment the Court is now required to decide the issue of jurisdiction at the time of granting the relief or considering the application for vacating the interim relief.

40. From reading of the aims and object of the Bill whereby Section 9A was inserted, the term 'jurisdiction' is used in a wider sense and is not restricted to the conventional definition either pecuniary jurisdiction or territorial jurisdiction as submitted by Mr. Nariman, learned senior counsel appearing for the appellant.

41. The term 'jurisdiction' is a term of art; it is an expression used in a variety of senses and draws colour from its context. Therefore, to confine the term 'jurisdiction' to its conventional and narrow meaning would be contrary to the well

settled interpretation of the term. The expression 'jurisdiction', as stated in Halsbury's Laws of England, Volume 10, paragraph 314, is as follows:

"314. Meaning of 'jurisdiction': By 'jurisdiction' is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by similar means.

If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the claims and matters of which the particular court has cognisance, or as to the area over which the jurisdiction extends, or it may partake of both these characteristics."

42. In American Jurisprudence, Volume 32A, paragraph 581, it is said that "Jurisdiction is the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all in any case; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause."

Further, in paragraph 588, it is said that lack of jurisdiction cannot be waived, consented to, or overcome by agreement of the parties.

43. It is well settled that essentially the jurisdiction is an authority to decide a given case one way or the other. Further, even though no party has raised objection with regard to jurisdiction of the court, the court has power to determine its own jurisdiction. In other words, in a case where the Court has no jurisdiction; it cannot confer upon it by consent or waiver of the parties.

44. Section 3 of the Limitation Act, 1963 clearly provides that every suit instituted, appeal preferred and application made after the prescribed period of limitation, subject to the provisions contained in Sections 4 to 24, shall be dismissed although the limitation has not been set up as a defence.

45. A Constitution Bench of five Judges of this Court in the case of Pandurang Dhondi Chougule vs. Maruti Hari Jadhav, 1966 SC 153, while dealing with the question of jurisdiction, observed that a plea of limitation or plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceeding. The Bench held:-

"10. The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As clauses (a), (b) and (e) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. 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. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115."

(Emphasis given)

46. In the case of *Manick Chandra Nandy vs. Debdas Nandy*, (1986) 1 SCC 512, this Court, while considering the the nature and scope of High Court's revisional jurisdiction in a case where a plea was raised that the application under Order IX Rule 13 was barred by limitation, held that a plea of limitation concerns the jurisdiction of the court which tries a proceeding for a finding on this plea in favour of the party raising it would oust the jurisdiction of the court. In the case of *National Thermal Power Corpn. Ltd. vs. Siemens Atkeingesellschaft*, 2007 (4) SCC 451, this Court considering the similar question under the Arbitration and Conciliation Act held as under:-

"17. In the larger sense, any refusal to go into the merits of a claim may be in the realm of jurisdiction. Even the dismissal of the claim as barred by limitation may in a sense touch on the jurisdiction of the court or tribunal. When a claim is dismissed on the ground of it being barred by limitation, it will be, in a sense, a case of the court or tribunal refusing to exercise jurisdiction to go into the merits of the claim. In *Pandurang Dhoni Chougule v. Maruti Hari Jadhav* this Court observed that: (AIR p. 155, para 10) "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. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code."

47. In the case of *Official Trustee vs. Sachindra Nath Chatterjee*, AIR 1969 SC 823, a three Judges Bench of this Court while deciding the question of jurisdiction of the Court under the Trust Act observed:-

"15. From the above discussion it is clear that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties."

48. In the case of *ITW Signode India Ltd. vs. CCE*, (2004) 3 SCC 48, a similar question came before a three Judges Bench of this Court under the Central Excise Act, 1944, when this Court opined as under:-

"69. The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact. Such a jurisdictional question is to be determined having regard to both fact and law involved therein. The Tribunal, in our opinion, committed a manifest error in not determining the said question, particularly, when in the absence of any finding of fact that such short-levy of excise duty related to any positive act on the part of the appellant by way of fraud, collusion, wilful misstatement or suppression of facts, the extended period of limitation could not have been invoked and in that view of the matter no show-cause notice in terms of Rule 10 could have been issued."

49. In the case of *Kamlesh Babu vs. Lajpat Rai Sharma*, (2008) 12 SCC 577, the matter came to this Court when the trial court dismissed the suit on issues other than the issue of limitation. The Bench held:-

"23. The reasoning behind the said proposition is that certain questions relating to the jurisdiction of a court, including limitation, goes to the very

root of the court's jurisdiction to entertain and decide a matter, as otherwise, the decision rendered without jurisdiction will be a nullity. However, we are not required to elaborate on the said proposition, inasmuch as in the instant case such a plea had been raised and decided by the trial court but was not reversed by the first appellate court or the High Court while reversing the decision of the trial court on the issues framed in the suit. We, therefore, have no hesitation in setting aside the judgment and decree of the High Court and to remand the suit to the first appellate court to decide the limited question as to whether the suit was barred by limitation as found by the trial court. Needless to say, if the suit is found to be so barred, the appeal is to be dismissed. If the suit is not found to be time-barred, the decision of the first appellate court on the other issues shall not be disturbed."

50. Mr. Shekhar Naphade, learned senior counsel appearing for the respondent relied upon a recent decision of a Division Bench of this Court in Civil Appeal No. 1085 of 2015 (Kamalakar Eknath Salunkhe vs. Baburav Vishnu Javalkar & Ors.) where this Court while considering Section 9A of the Maharashtra Amendments of CPC observed that the expression "jurisdiction" in Section 9A is used in a narrow sense i.e. territorial and pecuniary jurisdiction and not question of limitation. The Court observed:-

"17. The expression "jurisdiction" in Section 9A is used in a narrow sense, that is, the Court's authority to entertain the suit at the threshold. The limits of this authority are imposed by a statute, charter or commission. If no restriction is imposed, the jurisdiction is said to be unlimited. The question of jurisdiction, *sensu stricto*, has to be considered with reference to the value, place and nature of the subject matter. The classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction over the subject-matter is of a fundamental character. Undoubtedly, the jurisdiction of a Court may get restricted by a variety of circumstances expressly mentioned in a statute, charter or commission. This inherent jurisdiction of a Court depends upon the pecuniary and territorial limits laid down by law and also on the subject-matter of the suit. While the suit might be barred due to non-compliance of certain provisions of law, it does not follow that the non-compliance with the said provisions is a defect which takes away the inherent jurisdiction of the Court to try a suit or pass a decree. The law of limitation operates on the bar on a party to agitate a case before a Court in a suit, or other proceedings on which the Court has inherent jurisdiction to entertain but by operation of the law of limitation it would not warrant adjudication.

19. Thus, with the intention to put the aforesaid practice to rest, the State Legislature introduced Section 9A by the amendment Act of 1969 requiring the Court to decide the issue of jurisdiction at the time of granting or vacating the interim relief. In other words, the legislature inserted section 9A to ensure that a suit which is not maintainable for want of jurisdiction of the concerned Court, ought not be tried on merits without first determining the question of maintainability of the suit as to jurisdiction of the Court, approached by the plaintiff, as a preliminary issue.

20. The provision contemplates that when an issue of jurisdiction is raised, the said issue should be decided at first as expeditiously as possible, and not be adjourned to a later date.

The primary reason is that if the Court comes to finding that it does not have jurisdiction vested in it in law, then no further enquiry is needed and saves a lot of valuable judicial time.

21. A perusal of the Statement of Object and Reasons of the Amendment Act would clarify that Section 9A talks of maintainability only on the question of inherent jurisdiction and does not contemplate issues of limitation. Section 9A has been inserted in the Code to prevent the abuse of the Court process where a plaintiff drags a defendant to the trial of the suit on merits when the jurisdiction of the Court itself is doubtful.

22. In the instant case, the preliminary issue framed by the Trial Court is with regard to the question of limitation. Such issue would not be an issue on the jurisdiction of the Court and, therefore, in our considered opinion, the Trial Court was not justified in framing the issue of limitation as a preliminary issue by invoking its power under Section 9A of the Code. The High Court has erred in not considering the statutory ambit of Section 9A while approving the preliminary issue framed by the Trial Court and thus, rejecting the writ petition filed by the appellant."

51. With great respect, we are of the view that the decision rendered by the Division Bench in the case of *Kamalakar Eknath Salunkhe vs. Baburav Vishnu Javalkar & Ors.* is contrary to the law settled by the Constitution Bench and three Judges Bench of this Court, followed by other Division Bench in *Pandurang Dhondi Chougule vs. Maruti Hari Jadhav*, AIR 1966 SC 153, (Five Judges Bench) in *Manick Chandra Nandy vs. Debdas Nandy*, (1986) 1 SCC 512, *National Thermal Power Corpn. Ltd. vs. Siemens Atkeingesellschaft*, (2007) 4 SCC 451,

Official Trustee vs. Sachindra Nath Chatterjee AIR 1969 SC 823, ITW Signode India Ltd. vs. CCE, (2004) 3 SCC 48 and Kamlesh Babu vs. Lajpat Rai Sharma, (2008) 12 SCC 577. The Constitution Bench decision and other decisions given by larger Bench are binding on us. It appears that those decisions have not been brought to the notice of the Division Bench taking a contrary view.

52. Discussing the principle of binding precedents in the case of State of U.P. vs. Synthetics and Chemicals Ltd. 1991(4) SCC 139, this Court in paragraph 40 and 41 held as under:-

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd.). Same has been [pic]accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a

binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao v. Union Territory of Pondicherry* it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

53. The doctrine of binding precedents has been settled by several pronouncements of this Court. The Constitution Bench of this Court in the case of *Union of India vs. Raghubir Singh*, (1989) 2 SCC 754, observed as under:-

"8. Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law.

9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

54. In the case of *Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha*, (2001) 4 SCC 448, a Constitution Bench of this Court reiterated the same principle and held that:-

"2. We are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they could have ordered that the matter be heard by a Bench of three learned Judges."

55. This Court in the case of Central Board of Dawoodi Bohra Community vs. State of Maharashtra, (2005) 2 SCC 673, held as under:-

"8. In Raghbir Singh case, Chief Justice Pathak pointed out that in order to promote consistency and certainty in the law laid down by the superior court the ideal condition would be that the entire court should sit in all cases to decide questions of law, as is done by the Supreme Court of the United States. Yet, His Lordship noticed, that having regard to the volume of work demanding the attention of the Supreme Court of India, it has been found necessary as a general rule of practice and convenience that the Court should sit in divisions consisting of judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relating thereto and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. The Constitution Bench reaffirmed the doctrine of binding precedents as it has the merit of promoting certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs."

56. Mr. Nariman, learned senior counsel appearing for the appellant put heavy reliance on the decision in the case of Ramesh B. Desai vs. Bipin Vadilal Mehta, (2006) 5 SCC 638, for the proposition that a plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. In our considered opinion, in the aforesaid decision this Court was considering the provision of Order XIV Rule 2, CPC. While interpreting the provision of Order XIV Rule 2, this Court was of the view that the issue on limitation, being a mixed question of law and fact is to be decided along with other issues as contemplated under Order XIV, Rule 2, CPC. As discussed above, Section 9A of Maharashtra Amendment Act makes a complete departure from the procedure provided under Order 14, Rule 2, CPC. Section 9A mandates the Court to decide the jurisdiction of the Court before proceeding with the suit and granting interim relief by way of injunction.

57. At the cost of repetition, we observe that Section 9A provides a self-contained scheme with a non-obstante clause which mandates the court to follow the provision. It is a complete departure from the provisions contained in Order XIV Rule 2 CPC. In other words, the non-obstante clause inserted by Maharashtra Amendment Act of 1977 in Section 9A and the express mandate of the Section, the

intention of the law is to decide the issue relating to jurisdiction of the court as a preliminary issue notwithstanding the provision contained in Order XIV Rule 2 CPC. However, it is made clear that in other cases where the suits are governed by the provisions of Order XIV Rule 2 CPC, it is the discretion of the court to decide the issue based on law as preliminary issue.

58. We, therefore, after giving our anxious consideration to the provisions of Code of Civil Procedure together with the amendments introduced by the State Legislature, hold that the provision of Section 9A as introduced by (Maharashtra Amendment) Act is mandatory in nature. It is a complete departure from the provisions of Order XIV, Rule 2, C.P.C. Hence, the reasons given by the High Court in the impugned orders are fully justified. We affirm the impugned orders passed by the High Court.

59. For the reasons aforesaid, we do not find any merit in these appeals, which are accordingly dismissed with no order as to costs.