

Civil and criminal procedure for furtherance of substantial justice

Namesty.

A very good day to all of you.

It is an experience to me to stand before such an august gathering of judicial officers of the State and galaxy of justices including our Chief Justice.

I stand here not to deliver a lecture or to give any public speech. I stand here to talk very precisely about the procedural law vis-a-vis the Civil Procedure Code and its role in furtherance of substantial justice with special reference to jurisdiction and inherent powers of the civil courts.

This is only by way of revision of what you may have learnt as law students and what you may have been experiencing as Judicial Officers.

I begin with some basics of law.

Laws can be classified as either substantive law or procedural law.

Substantive law determines rights and liabilities of parties or defines the nature and extent of their legal duties. Transfer of Property Act, 1882 and Contract Act, 1872 etc. are examples of the same.

Procedural law prescribes the practice, procedure and machinery for the enforcement or recognition of legal rights and liabilities by the court of law such as Law of Limitation, Evidence Act, C.P.C. & Cr.P.C.

The procedural law can not provide for things which are not given by substantive law and can not take away that which has been provided by substantive law.¹ Thus, procedural law is always subservient to substantive law.

The function of procedural law is to facilitate justice and further its ends. Therefore, the rules of procedure must be construed liberally and in such a manner so as to render effective the enforcement of substantive rights. A hyper technical view must not be adopted by courts in interpreting and applying procedural laws.

1. AIR 1998 SC 1624 : (1998) 4 SCC 349.

In this context, I consider it appropriate to quote Justice Lahoti (as his Lordship then was) from one of his Lordships Judgment. ²

I quote:-

“Procedural law can not betray the substantive law by submitting to subordination of complexity..... When the statute does not provide the path and precedents abstains to lead, then they are the sound logic, rational, reasoning, common sense and urge for public good which play as guides of those who decide. Wrong must not be left unredeemed and right not left unenforced. Forum ought to revealed when it does not clearly exist or when it is doubted where it exists.”

Unquote.

C.P.C. as an example of procedural law forms an indispensable part of the machinery of justice. It operates as an essential tool for enforcing legal rights and claims, for redressing or preventing legal wrongs and for ascertaining legal defences and for other ancillary purposes. It should not be treated as an enactment providing for punishment and penalties.

The Code of Civil Procedure is divided into two parts.

- (i) the body of the code containing 158 Sections; and
- (ii) the first schedule containing 51 Orders along with the Rules.

The first part lays down the general principles whereas the second part prescribes the method, manner and mode of exercising the general principles. Thus, the first part and the second part must be read together and construed harmoniously. If anything in the Orders or the Rules is inconsistent with the Sections, the later would prevail.

Section 9 C.P.C. makes it ample clear that courts have jurisdiction to try all suits of civil nature except those which are expressly or impliedly barred. The presumption is always that the court has jurisdiction to try all suits of a civil nature subject to the above exception.

In **Smt. Ganga Bai's case**³ the Supreme Court observed as follows:-

² (2002) 6 SCC 16.

³ AIR 1974 SC 1126 : (1974) 2 SCC 393.

“There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at ones peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the 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.”

This principle evolved is certainly for the advancement of substantive law so that a legally enforceable right may not be shut down on account of technicality.

Exclusion of the jurisdiction of the Civil Court cannot be readily inferred. The exclusion must either be explicit or implied.

The power or authority of a court to inquire into the facts, to apply the law, to pronounce a judgment and to carry it into execution depends upon its jurisdiction.

The jurisdiction of the court to try a suit is an essential precondition for the filing of the suit before it. Where a court lacks inherent jurisdiction to try a matter, express consent of the parties, waiver or acquiescence can not create it.

The concept of 'jurisdiction of a court' comprises of territorial jurisdiction, pecuniary jurisdiction and jurisdiction as to subject matter.

A defect as to the inherent jurisdiction of a court with regard to a matter, whether pecuniary or territorial, strikes at the very authority of the court to pass a decree and cannot be cured even by the consent of the parties to the suit.

A decree passed by a court lacking jurisdiction is a nullity and its invalidity can be set up as a defence, when the decree is being enforced or relied upon, even at the stage of execution or in collateral proceedings.⁴

Many statutes expressly provide that courts of civil jurisdiction will have no authority to take cognizance in respect of the matters covered by the said Act for example Section 80 of the Representation of the People Act, 1951 which specifically provides that no election shall be called in question

4. AIR 1954 SC 340 Kiran Singh Vs. Chaman Paswan.

except by an election petition presented in accordance with the provisions of this Act.

The aforesaid provision expressly exclude the jurisdiction of the civil court from taking cognizance in election matters.

A suit is impliedly barred when it is not expressly barred by any statute but is barred by necessary implication for example where a statute provides for a particular remedy in a particular forum and in a particular way, the remedy must be sought in that forum and in that manner and not in any other forum including civil courts and all other forums and modes of seeking redressal are necessarily excluded.⁵

A glaring example of exclusion of jurisdiction of the civil court by implication is that of challenge to land acquisition proceedings by means of a civil suit.

A civil court is entitled to determine if the matter before it falls within its jurisdiction or not and in deciding the question of jurisdiction the substance of the pleadings as a whole is to be considered. The burden to prove the ouster of the jurisdiction of the civil court is upon the party who raises the plea. In case of doubt the court will always lean towards assumption of jurisdiction rather than its exclusion.

Order 7 Rule 11 C.P.C. provides for rejection of complaints at the very initial stage and one of the grounds for rejection is where the suit from the statement in the complaint appears to be barred by any law. Therefore, a complaint of a suit if from its averments appears to the court to be barred by any Act or statute is liable to be rejected at the threshold. However, precaution must be taken while rejecting a complaint under Order 7 Rule 11 C.P.C. as the decision in that regard has to be taken on the plain and simple reading of the complaint allegations and not on the basis of any defence put-forth by the other side. There may be cases where the suit may appear to be barred by some statute such as limitation Act or U.P. Z.A. & L.R. Act, 1950 but they may involve consideration of factual aspects and the evidence in support thereof. In such cases it is always prudent to formulate an issue regarding the maintainability

⁵ AIR 1975 SC 2238; AIR 2006 SC 2850;(2006) 5 SCC 720.

of the suit or it being barred by a particular provision of the Act and to decide it either as a preliminary issue or along with the other issues arising in the suit. Thus, in a suit for trespass where the defendant claims that he is a tenant, the defence will not oust the jurisdiction of the court. However, if the defendant establishes tenancy, the court will dismiss the suit.⁶

Section 151 of the Code is a typical example which empowers civil courts for doing real and substantial justice between the parties where the Code is silent regarding a particular procedural aspect.

The procedure prescribed cannot limit or otherwise affect the power of the court to make such orders as may be necessary in the ends of justice or to prevent the abuse of the process of the Code. This power is not an additional power vested in any court but is inherent. It however cannot be exercised in conflict with the express procedural law.

The court has authority to take recourse to procedural review to recall an order in the interest of justice even if no power of review is conferred upon it. It has power to enlarge time fixed by the court or granted by the Code for doing a particular thing even beyond the period of 30 days as fixed vide Section 148 of the Code or even otherwise for just cause, amend judgments, decrees or orders or to remove any defect in the proceedings of the suit as postulated by Sections 152 and 153 of the Code, to set aside ex parte decrees or orders, grant temporary injunctions even if not covered by Order 39, add, delete or transpose parties to the suit, add, delete or reformulate issues, revive execution proceedings, take notice of subsequent events, allow pleadings to be amended, expunge unwanted remarks and to hold trial in camera if necessary etc.

The use of the word 'may' at most of the relevant places in the Code denotes the vast discretion vested in civil courts in procedural matters for the advancement of substantial justice. Even where a procedural provision is couched in a mandatory language and the word 'shall' is used therein it has been interpreted to be directory in nature.

In order to avoid delays, Rule 1 of Order 8 C.P.C. provides that the

6 . AIR 1990 SC 1563.

defendant shall file written statement within 30 days of the service of the summons upon him and the court has been authorised to extend the said time for reasons to be recorded in writing in a given case but not beyond 90 days from the service of the summons. However, despite the mandatory form of language used in the aforesaid provision, the Apex Court in **Salem Bar Association case**⁷ has held the above provision to be directory in nature and that the courts have sufficient authority of law to grant more time to the defendant to file written statement if necessary in furtherance of substantial justice.

Similarly Order 17 Rule 1 C.P.C. which mandates that no party shall be granted any adjournment more than three times during the hearing of the suit does not necessarily places an absolute bar upon the hands of the court to grant any further adjournment if the situation of the case so inheres lest it may defeat the cause of substantial justice. In granting such adjournments however, the courts have to be little careful and must resort to imposition of costs which may go on increasing with each adjournment to check delays and the dilatory tactics if any adopted by any party.

All these and many other provisions of the like nature are matters of procedure which aid dispensation of justice and the court has ample authority in law to deviate a little in a given case in its discretion so as to secure the ends of justice and to avoid the abuse of the process of the law.

This is all for the time being. I conclude.

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⁷ (2005) 6 SCC 344.