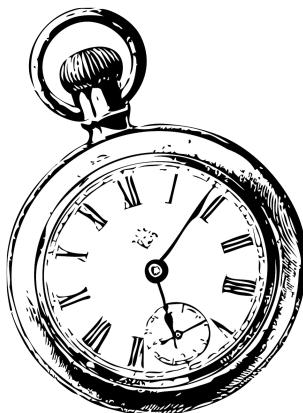


## LEGAL UPDATE

AUGUST-2018

### REDUCING TRIAL TIME?

#### The Deletion Of Section 9A Of The Code Of Civil Procedure, 1908



Section 9A was a provision added to the Code of Civil Procedure, 1908 (CPC) in 1977, and was applicable only to the State of Maharashtra. The provision made it mandatory for every civil court in Maharashtra to first decide the question of whether or not it was vested with the jurisdiction to entertain a suit before granting any interim relief in the suit. "Jurisdiction" means the authority to hear and decide upon a particular suit and "interim relief" means temporary orders given by a court pending the final decision in a suit.

Section 9A has now been deleted from the CPC. Court cases already pending in Maharashtra and court cases to be filed in Maharashtra will be affected by this deletion.

Section 9A was deleted because the government was of the opinion that it was creating bottlenecks in the speedy hearing of cases and creating even more incongruous

#### What did Section 9A entail?

Section 9A stated that, where an application had been filed by one party seeking any interim reliefs pending the hearing and final disposal of a suit, and the other party had raised the issue of whether or not the court entertaining the matter had jurisdiction, the court was first required to decide at the hearing of such an application, the issue of jurisdiction as a

situations than it was intended to solve

limitation (relating to whether a matter is barred by the passage of time) was also raised as an issue of jurisdiction under Section 9A.

However, the court could grant ad interim relief pending the hearing of the preliminary jurisdiction issue.

## Why was Section 9A originally added?

The Maharashtra government added Section 9A to the CPC in 1977 because it believed that courts were granting injunctions and other interim reliefs in matters that they had no jurisdiction to decide at all. This led to the absurd situation where a court might pass interim orders in favour of a party to a matter that would continue in force for several years, only to decide when the matter was finally heard that it had not had the jurisdiction to entertain the matter in the first place. Section 9A was inserted to save the time of the court and to protect innocent parties in such situations.

## Why was Section 9A deleted?

Section 9A was deleted because the government was of the opinion that it was creating bottlenecks in the speedy hearing of cases and creating even more incongruous situations than it was intended to solve. It was felt that the hearing of Section 9A applications burdened the court with duplication of work and, thus, resulted in a colossal waste of precious judicial time and resources.

First, as mentioned above, Section 9A allowed courts to grant ad interim relief pending the hearing of the preliminary jurisdiction issue. But in the meantime, as per the provisions of Section 9A, courts could not dispose of the interim relief applications until the jurisdiction issues were finally decided. In most cases, such interim relief applications, along with the preliminary issue of jurisdiction, remained pending for several years and the parties continued to enjoy the benefits of the ad interim relief granted which could then almost be characterised as final relief.

Second, to decide questions of jurisdiction, evidence had to be led at a preliminary stage. Thus, courts would conduct two trials, one on the preliminary issue and another on the remaining issues if the court whilst deciding the issue of jurisdiction in terms of Section 9A concluded that it

preliminary issue. The court was required to decide the jurisdiction issue before granting or rejecting any interim relief. In some cases the issue of

had the jurisdiction to entertain the matter. Each decision would then be subject to appeals and special leave petitions.

Thus, pursuant to a Cabinet decision taken in the month of January 2018, on 27 June 2018, the Government of Maharashtra issued an ordinance<sup>[1]</sup> by which Section 9A of the CPC in its application to the State of Maharashtra stood deleted with effect from 27 June 2018.<sup>[2]</sup>

### **So, what are the consequences of the deletion of Section 9A?**

The deletion of Section 9A will put the procedure for the hearing of jurisdiction issues in Maharashtra back on par with the procedure followed elsewhere in the country. Courts will now be free to use their discretion to grant or deny interim relief without deciding on jurisdiction.

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### **What are the consequence of the deletion of Section 9A on pending matters?**

The ordinance deleting Section 9A contains a savings clause, which provides the effects and consequences of the deletion of Section 9A on proceedings pending in the courts on the date of commencement of the ordinance.

#### ***Where the preliminary jurisdiction issue has been framed by the court and is pending consideration***

In such cases, the preliminary issue will no longer be decided by the court and will be deemed to be just another legal issue to be decided by the court, as it deems fit, along with all other issues at the time of the final disposal of the suit. Further, if any evidence has already been led by the parties on such preliminary issue, then such evidence will also be considered by the court along with evidence, if any, led on other issues in the suit at the time of the final disposal of the suit. Thus, it seems that in such cases the parties can now proceed for the trial of the suit. Of course,

if there are any pending interim applications, the court will hear these before the trial of the suit.

### ***Where the preliminary jurisdiction issue has been decided holding that the court has jurisdiction***

In such cases, revisional proceedings challenging the decision that the court has jurisdiction to entertain the suit shall stand abated (cease).

In this provision the legislature has dealt only with revisional proceedings and has clearly omitted any reference to an ‘appeal’ or ‘appellate proceedings’. Appellate proceedings differ from revisional proceedings. In Mumbai, if a Section 9A application is decided in a suit filed before the Bombay City Civil Court, a revision will lie from such a decision to the Bombay High Court. However, if a Section 9A application is decided in a suit filed before the Bombay High Court, an appeal will be preferred from such a decision to an original side division bench of the Bombay High Court.

### ***Where the preliminary jurisdiction issue has been decided holding that the court has no jurisdiction***

In such cases, an appeal or a revision filed challenging the decision shall continue as if the ordinance had not been enacted and Section 9A had not been deleted. However, in case the appellate or revisional court, while allowing such appeal or revision, remands the matter to the trial court for reconsideration of the preliminary jurisdiction issue then the jurisdiction issue shall be reconsidered along with all the other issues at the time of final disposal of the suit.

### ***Ad interim relief to continue***

Ad interim relief granted under Section 9A prior to its deletion (pending the decision on the preliminary jurisdiction issue) will remain in operation until the final disposal of the application for interim relief and will be confirmed or vacated at the time of final disposal of the application. Parties could therefore, prior to pursuing the trial of suit proceedings, now move the court for hearing of these interim applications.

## **Will the deletion of Section 9A solve the issue of judicial delay?**

Probably not. The deletion of Section 9A may in fact mean that courts waste more time hearing futile matters that they years later decide they never had the jurisdiction to entertain. Pending the hearing of such matters, parties could take the benefit of long term interim relief – in

India, it often takes fifteen or twenty years for a suit to reach its logical conclusion.

Ad interim relief granted under Section 9A prior to its deletion... will remain in operation until the final disposal of the application for interim relief

Other measures of reform might have been better suited to speeding up the disposal of court cases where the preliminary issue of jurisdiction had been raised. The government might have considered assigning a special judge to decide matters where courts had framed a preliminary jurisdiction issue, where evidence on this issue was being led or where appellate or revisional proceedings relating

to this issue were pending. The government could also have considered providing a specified and mandatory time period (similar to the one in the Arbitration Act, 1996 for the conclusion of arbitration proceedings) to decide these matters. Better infrastructure and allocation of more resources may also have had a greater impact on the speedy disposal of such cases.

The large number of cases pending under Section 9A could also have been reduced had the Supreme Court been faster in resolving issues thrown up relating to the interpretation of the section – the issue as to whether limitation can be raised as an issue of jurisdiction under Section 9A has been pending before the Supreme Court for almost three years now.

On the other hand, the deletion of Section 9A has given courts more flexibility to decide when and whether to decide the issue of jurisdiction in any given matter, whether as a preliminary issue or along with the substantive trial of the matter.

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[1] Maharashtra Ordinance No. XVIII of 2018 – the Code of Civil Procedure (Maharashtra Amendment) Ordinance, 2018.

[2] See also, in relation to ordinances: [Ordinances and their consequences](#)

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