NUSLI NEVILLE WADIA

v.

IVORY PROPERTIES & ORS.

(Special Leave Petition (Civil) Nos. 31982-31983 of 2013)

OCTOBER 04, 2019

[ARUN MISHRA, M. R. SHAH AND B. R. GAVAI, JJ.]

Code of Civil Procedure, 1908: s.9A (as inserted by Maharashtra Amendment Act, 1977) – Jurisdiction – Preliminary issue of limitation – Held: Issue of limitation cannot be decided as preliminary issue – The decision in Kamlakar Shantaram has been correctly decided and cannot be said to be per incurium as held in Foreshore Cooperative Housing Society Limited.

Code of Civil Procedure, 1908: s.9A (as inserted by Maharashtra Amendment Act, 1977) – Jurisdiction – Under the provisions of s.9A and Order XIV Rule 2, it is open to decide preliminary issues if it is purely a question of law not a mixed question of law and fact by recording evidence.

Code of Civil Procedure, 1908: s.9A (as inserted by Maharashtra Amendment Act, 1977) – Jurisdiction – When considering what colour expression "jurisdiction" has in s.9A, it is clearly in the context of power to entertain, jurisdiction takes colour from accompanying word 'entertain'; i.e. the Court should have jurisdiction to receive a case for consideration or to try it – In case there is no jurisdiction, court has no competence to give the relief, but if it has, it cannot give such relief for the reason that claim is time-barred by limitation or is barred by the principle of res judicata or by bar created under any other law for the time being in force.

Code of Civil Procedure, 1908: s.9A (as inserted by Maharashtra Amendment Act, 1977) – Jurisdiction – When a case is barred by res judicata or limitation, it is not that the Court has no power to entertain it, but it is not possible to grant the relief – Due to expiry of limitation to file a suit, extinguishment of right to property is provided under s.27 of the Limitation Act – When Court

A *dismisses a suit on the ground of limitation, right to property is lost, to hold so the court must have jurisdiction to entertain it – The Court is enjoined with a duty under s.3 of the Limitation Act to take into consideration the bar of limitation by itself – The expression "bar to file a suit under any other law for the time being*
B *in force" includes the one created by the Limitation Act – It cannot be said to be included in the expression "jurisdiction to entertain" suit used in s.9A – The Court has to receive a case for consideration and entertain it, to look into the facts constituting limitation or bar created by any other law to give relief, it has to decide the question on merits; then it has the power to dismiss the*
C *same on the ground of limitation or such other bar created by any other law – Thus, the meaning to be given to jurisdiction to entertain in s.9A is a narrow one as to maintainability, the competence of the court to receive the suit for adjudication is only covered under the provisions.*

D *Code of Civil Procedure, 1908: Or.XIV r.2(2)(b) and s.9 – Preliminary issue – In a case question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Or.XIV r.2(2)(b) – However, when facts are disputed about limitation, the determination of the question of limitation also*
E *cannot be made under Or.XIV r.2(2)(b) as a preliminary issue or any other such issue of law which requires examination of the disputed facts – In case of dispute as to facts, is necessary to be determined to give a finding on a question of law – Such question cannot be decided as a preliminary issue – Thus, a mixed question*
F *of law and fact cannot be decided as a preliminary issue, either under s.9A or under Or.XIV r.2 – Before or after its amendment of CPC concerning both provisions, the position is the same – Limitation.*

Jurisdiction: Meaning of – Held: Jurisdiction is the authority
G *by which a judicial officer takes cognizance and decides the cases. It only presupposes the existence of a duly constituted court having control over subject-matter which comes within classification limits of the law under which court has been established. It should have control over the parties litigant, control over the parties' territory, it may also relate to pecuniary as well as the nature of the class*
H *of cases.*

Jurisdiction: Existence of jurisdiction and the exercise of jurisdiction – Distinction between – Held: The jurisdiction to entertain has different connotation from the jurisdictional error committed in exercise thereof – The existence of jurisdiction is reflected by the fact of amenability of the judgment to attack in the collateral proceedings – If the court has an inherent lack of jurisdiction, its decision is open to attack as a nullity – While deciding the issues of the bar created by the law of limitation, res judicata, the Court must have jurisdiction to decide these issues – In case jurisdiction is exercised with material irregularity or with illegality, it would also constitute jurisdictional error.

Code of Civil Procedure (Maharashtra Amendment) Act, 2018: s.2 – s.2 of Amendment Act, 2018 which provides that where consideration of preliminary issue framed under s.9A is pending on the date of commencement of the CPC, the said issue shall be decided and disposed of by the court under s.9A as if the provision under s.9A has not been deleted, does not change the legal scenario as to what can be decided as a preliminary issue under s.9A, CPC, as applicable in Maharashtra – The saving created by the provision of s.2 where consideration of preliminary issue framed under s.9A is pending on the date of commencement of the Amendment Act, 2018, can be decided only if it comes within the parameters on the interpretation of s.9A – No issue can be decided only under the guise of the provision that it has been framed under s.9A and was pending consideration on the date of commencement of the Amendment Act, 2018.

Words and Phrases: Expression 'Jurisdiction to entertain the suit' – Meaning of – Explained.

Words and Phrases: Expression 'entertain' – Meaning of – Held: The word 'entertain' means to admit for consideration – It means to adjudicate upon or to proceed to consider on merits.

Answering the reference, the Court

HELD:

IN RE: MEANING OF WORD JURISDICTION

1.1 Jurisdiction is the power to decide and not merely the power to decide correctly. Jurisdiction is the authority of law to

act officially, in a particular matter in hand. It is the power to take cognizance and decide the cases. It is the power to decide rightly or wrongly. It is the power to hear and determine. Same is the foundation of judicial proceedings. It does not depend upon the correctness of the decision made. It is the power to decide justiciable controversy and includes questions of law as well as facts on merits. Jurisdiction means power to entertain a suit, consider merits, and render binding decisions, and "merits" means the various elements which enter into or qualify plaintiff's right to the relief sought. If the law confers a power to render a judgment or decree, then the court has jurisdiction. [Para 16] [823-D-F]

1.2 Jurisdiction is generally understood as the authority to decide, render a judgment, inquire into the facts, to apply the law, and to pronounce a judgment. When there is the want of general power to act, the court has no jurisdiction. When the court has the power to inquire into the facts, apply the law, render binding judgment, and enforce it, the court has jurisdiction. Judgment within a jurisdiction has to be immune from collateral attack on the ground of nullity. It has co-relation with the constitutional and statutory power of tribunal or court to hear and determine. It means the power or capacity fundamentally to entertain, hear, and determine. [Para 17] [824-B-C]

1.3 Jurisdiction to entertain is distinguished from merits, error in the exercise of jurisdiction or excess of jurisdiction. Section 9 of the Code of Civil Procedure deals with jurisdiction and empowers the courts to try all civil suits unless barred. The words used in section 9 of the Code of Civil Procedure of 1882 "barred by any enactment for the time being in force" are substituted in the Code of Civil Procedure of 1908 by "either expressly or impliedly barred." Thus, the word "jurisdiction" under section 9 correlates with the cognisance, i.e., is not barred either expressly or impliedly. [Paras 18-20] [824-D-G-H]

Raja Soap Factory v. S.P. Shantharaj, **AIR 1965 SC 1449 : [1965] SCR 800 ;** *A.R. Antulay v. R.S. Nayak and Anr.*, **(1988) 2 SCC 602 : [1988] 1 Suppl. SCR 1 ;** *Delhi Special Police Establishment, New Delhi v.*

Lt. Col. S.K Loraiya, **(1972) 2 SCC 692 : [1973] 1 SCR 1010 ;** *Smt. Ujjam Bai v. State of Uttar Pradesh*, **AIR 1962 SC 1621 : [1963] SCR 778 ;** *Anowar Hussain v. Ajay Kumar Mukherjee*, **AIR 1965 SC 1651 – referred to.** A

1.4 The jurisdiction in Section 9A must be considered in the context it has been used. The word jurisdiction has to be interpreted in the context which has been used in the various provisions. The word "jurisdiction" has been used in CPC in several provisions. Section 9 deals with the jurisdiction to try all suits by a civil court except those which are barred. Section 10 prohibits a Court from proceeding with the trial. Section 11 and Explanation VIII are based upon the principle of res judicata. Order II Rule 3(2) contains a provision concerning the jurisdiction of the Court as regards the suit. Order VII Rule 11(d) deals with the rejection of the plaint on the ground being barred by law. Order XIV Rule 2 distinguishes between preliminary issues relating to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. There are various other provisions in which the expression has been used. [Para 27] [828-B-E] B C D

IN RE: "ENTERTAIN THE SUIT" E

2.1 When considering the provisions in Section 9A, the word jurisdiction is qualified with "to entertain the suit," the expression used is 'jurisdiction to entertain the suit.' The Court has jurisdiction to entertain a suit when it has jurisdiction to receive it for consideration. If at the threshold, the Court cannot consider it, it can be said that the Court has no jurisdiction to entertain the case. It is like a suit is cognizable by Revenue Court, but it is filed in Civil Court, the Court cannot consider it nor can receive it for trial. When the separate statutory mechanism is provided for the consideration of a particular dispute and jurisdiction of Civil Court is barred, and if it is brought before the Civil Court whose jurisdiction is barred, it cannot entertain such a suit and receive it for consideration. It can be said that the Court has no jurisdiction to entertain such a suit. The expression "jurisdiction to entertain" is also used in Section 14 of the Limitation Act. The provisions of Section F G H

A **14 provide that in case a suit is filed in the wrong court and the Court from the defects of jurisdiction is unable to entertain it, the period to institute a suit can be extended. [Para 28-29] [828-F-H; 829-A-B]**

2.2 The expression 'entertain' means to admit a thing for B **consideration. When a suit or proceeding is not thrown out in limine, but the court receives it for consideration for disposal under the law, it must be regarded as entertaining the suit or proceeding. It is inconsequential what is the final decision. The expression 'entertain' means to adjudicate upon or to proceed** C **to consider on merits. [Para 31, 32] [830-F-H]**

The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke & Ors., **AIR 1975 SC 2238 : [1976] 1 SCR 427 – affirmed.**

Lakshmiratan Engineering Works Ltd. v. Assistant D *Commissioner, Sales Tax, Kanpur* **AIR 1968 SC 488 : [1968] SCR 505 ;** *Hindusthan Commercial Bank Ltd. v. Punnu Sahu (Dead) through Legal Representatives* **(1971) 3 SCC 124 ;** *Kashiram v. Santokhbai* **AIR 1958 MP 91 ;** *Nakul Chandra Ghose v. Shyamapada Ghose* **AIR 1945 Cal 381 – referred to.**

E

IN RE: DIFFERENCE BETWEEN EXISTENCE AND EXERCISE OF JURISDICTION

3.1 There is a difference between the existence of jurisdiction and the exercise of jurisdiction. In case jurisdiction F **is exercised with material irregularity or with illegality, it would also constitute jurisdictional error. However, if a court has jurisdiction to entertain a suit but in exercise of jurisdiction, a mistake has been committed, though it would be a jurisdictional error but not lack of it. It may be a jurisdictional error open for** G **interference in appellate or revisional jurisdiction. In a case, jurisdictional facts, as well as adjudicatory facts, may arise. When jurisdictional facts to entertain are missing, the court/tribunal cannot act at all. In the case of adjudicatory facts, the court can proceed with the trial of the case exercising jurisdiction, and the same implies that the court has the jurisdiction to deal with the** H **matter, that is called the power to examine on merits.**

Adjudication is the power to proceed to consider on merits. [Paras 33, 36] [831-G; 832-H; 833-A] A

Dabur India Limited v. K. R. Industries, **(2008) 10 SCC 595 : [2008] 9 SCR 652 ;** *Bhai Jai Kishen Singh v. Peoples Bank of Northern India (in liquidation) through Bhagwati Shankar, Official Liquidator,* **AIR 1944 Lah 136 ;** *Union of India v. Tarachand Gupta and Bros.*, **(1971) 1 SCC 486 : [1971] SCR 557 ;** *Official Trustee, West Bengal v. Sachindra Nath Chatterjee,* **AIR 1969 SC 823 : [1969] SCR 92 – referred to** B

Anisminic Ltd. v. Foreign Compensation Commission, **[1968] 2 Q.B. 862 – referred to.** C

3.2 When a claim is dismissed as barred by limitation, no doubt the refusal is within the realm of exercise of jurisdiction by the Court or Tribunal. It cannot be said that the Court has refused to exercise the jurisdiction to go into the merits by a wrong decision dismissing the case on the ground of limitation. An erroneous decision on the question of res judicata or limitation would not oust the jurisdiction of the Court nor render the decision a nullity liable to collateral attack. The test of having no jurisdiction by the Court is that its judgment is amenable to attack in collateral proceedings. In a case barred by limitation, Court has jurisdiction to decide the issue. In case it has no jurisdiction, it cannot decide such an issue on merits at all. [Paras 40-42] [837-A-B; 840-D-F] D E

M.L. Sethi v. R.P. Kapur, **(1972) 2 SCC 427 : [1973] 1 SCR 697 ;** *Budhia Swain & others v. Gopinath Deb and others,* **(1999) 4 SCC 396 : [1999] 2 SCR 1189 – relied on.** F

National Thermal Power Corpn. Ltd. v. Siemens Atkeingesellschaft, **(2007) 4 SCC 451 : [2007] 3 SCR 399 – held inapplicable.** G

IN RE: JURISDICTION TO ENTERTAIN UNDER SECTION 9A, CPC

4.1 The word "jurisdiction" in section 9A is qualified with expression to 'entertain' the suit. Thus, it is apparent that the H

scope of Section 9A has been narrowed down by the legislature as compared to the provisions contained in Order XIV Rule 2(2) by not including the provisions as to "a bar created by any other law for the time being in force." Since the expression used in section 9A as incorporated in Maharashtra, is "jurisdiction to entertain" that is in a narrower sense and its purport cannot be taken to be comprehensive. [Paras 43-44] [840-G-H; 841-A-B]

4.2 When considering what colour expression "jurisdiction" has in Section 9A, it is clearly in the context of power to entertain, jurisdiction takes colour from accompanying word 'entertain'; i.e. the Court should have jurisdiction to receive a case for consideration or to try it. In case there is no jurisdiction, court has no competence to give the relief, but if it has, it cannot give such relief for the reason that claim is time-barred by limitation or is barred by the principle of res judicata or by bar created under any other law for the time being in force. When a case is barred by res judicata or limitation, it is not that the Court has no power to entertain it, but it is not possible to grant the relief. Due to expiry of limitation to file a suit, extinguishment of right to property is provided under Section 27 of the Limitation Act. When Court dismisses a suit on the ground of limitation, right to property is lost, to hold so the court must have jurisdiction to entertain it. The Court is enjoined with a duty under Section 3 of the Limitation Act to take into consideration the bar of limitation by itself. The expression "bar to file a suit under any other law for the time being in force" includes the one created by the Limitation Act. It cannot be said to be included in the expression "jurisdiction to entertain" suit used in Section 9A. The Court has to receive a case for consideration and entertain it, to look into the facts constituting limitation or bar created by any other law to give relief, it has to decide the question on merits; then it has the power to dismiss the same on the ground of limitation or such other bar created by any other law. Thus, the meaning to be given to jurisdiction to entertain in Section 9A is a narrow one as to maintainability, the competence of the court to receive the suit for adjudication is only covered under the provisions. The word entertain cannot be said to be the inability to grant relief on merits, but same

relates to receiving a suit to initiate the very process for granting relief. [Para 45] [841-B-G]

4.3 As per Order XIV Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and if the question of law arises which is dependent upon the outcome of admitted facts, it is open to the Court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order XIV Rule 2. In Order XIV Rule 2(1), the Court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order XIV Rule 2(2) makes a departure and Court may decide the question of law as to jurisdiction of the Court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act. In a case question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order XIV Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order XIV Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976. [Paras 46, 47] [842-D-H; 843-A]

4.4 What is intended by Section 9A of the Code of Civil Procedure, 1908 (CPC) is the defect of jurisdiction. It may be inter alia territorial or concerning the subject matter. The defect of jurisdiction may be due to provisions of the law. It is only the maintainability of the suit before the court which is covered within the purview of Section 9-A CPC as amended in

A **Maharashtra. Section 3 of the Limitation Act provides that subject to the provisions contained in Sections 4 to 24 of the Limitation Act, every suit instituted, appeal preferred, and the application made after the prescribed period shall be dismissed, it nowhere provides that Court has no jurisdiction to deal with the matter. Until and unless Court has the jurisdiction, it cannot proceed to dismiss it on the ground of limitation under Section 3. [Paras 49, 50] [843-C-G]**

B

Raghunath Das v. Gokal Chand, **AIR 1958 SC 827 : [1959] SCR 811 – relied on.**

C **IN RE: ORDER XIV RULE 2**

5. The expressions used in the Order XIV Rule 2 as incorporated in the CPC by way of Amendment Act, 1976 deals with the jurisdiction of the Court. The scope of Section 9A is different as compared to the provisions of Order XIV Rule 2 and
D **the scope of Section 9A is limited not as comprehensive as that of Order XIV Rule 2. However, the concept of Order XIV Rule 2 with respect to what can be treated as preliminary issue will be applicable under Section 9A only in case question of "jurisdiction to entertain" arises, i.e., if it can be decided purely**
E **as question of law, at the stage contemplated under Section 9A, not in case if it is a mixed question of law and fact, no evidence can be recorded to decide the question under Section 9A, CPC. [Paras 52, 54] [844-D-G-H; 845-A]**

F *Sajanbir Singh Anand and others v. Raminder Kaur Anand and others* **(2018) 3 Mh.L.J. 892 ;** *Gunwantbhai Mulchand Shah v. Anton Elis Farel and others,* **(2006) 3 SCC 634 : [2006] 2 SCR 886 ;** *Indian Bank v. Maharashtra State Cooperative Marketing Federation Ltd.,* **(1998) 5 SCC 69 : [1998] 3 SCR 187 ;** *Sneh Lata Goel v. Pushplata and others,* **(2019) 3 SCC 594 : [2019] 1 SCR 463 ;** *Hiralal Patni v. Kali Nath,* **AIR 1962 SC 199 : [1962] SCR 747 – referred to.**

G

Abdul Rahman v. Prasony Bai and another, **(2003) 1 SCC 488 : [2002] 4 Suppl. SCR 260 – held inapplicable.**

H

IN RE: MIXED QUESTION OF LAW AND FACT AND ORDER VII RULE 11 CPC

6.1 Question of limitation, in no case, can be said to be a question of jurisdiction of the Court in the context it has been used in Section 9A CPC. It cannot be laid down as proposition of law under Order VII Rule 11(d) that plaint cannot be rejected as barred by limitation. It can be said that it is permissible to do so mainly in a case where the plaint averment itself indicate the cause of action to be barred by limitation and no further evidence is required to adjudicate the issue. [Paras 58, 62] [847-E; 848-F]

Major S.S. Khanna v. Brig. F.J. Dhillon **AIR 1964 SC 497 : [1964] SCR 409 ;** *Narne Rama Murthy v. Ravula Somasundaram & Ors.* **(2005) 6 SCC 614 : [2004] 6 Suppl. SCR 1065 ;** *Satti Paradesi Samadhi and Pillayar Temple v. M. Sankuntala (Dead) through Legal Representatives and others*, **(2015) 5 SCC 674 : [2014] 9 SCR 221 ;** *Ramdayal Umraomal v. Pannalal Jagannathji,* **1979 M.P.L.J 736 ;** *Sunni Central Waqf Board and others v. Gopal Singh Vishrad and others,* **AIR 1991 All 89 ;** *Venkatesh r. Desai v. Smt. Pushpa Hosmani & Ors.,* **ILR 2018 Kar 5095 ;** *Prithvi Raj v. Munnalal*, **1957 RLW 323 ;** *Bhag Singh v. Nek Singh* **(1994) SCC OnLine P&H 594 ;** *State Trading Corporation of India Ltd. v. Government of the Peoples Republic of Bangladesh,* **ILR (1997) Del 229 ;** *Naresh Chandra Das v. Gopal Chandra Das,* **AIR 1991 Cal 237 ;** *Taj Kerala Hotels & Resorts Ltd. v. Easytec India Pvt. Ltd.,* **(2013) SCC OnLine Ker 20240 ;** *Madhabananda Govindasamy v. Manickam & Ors.*, **2016-1-L.W. 49 ;** *Angsley Investment Ltd. v. Turus Shipping Service & Ors.,* **AIR 2007 Guj 23 ;** *Chandrama Singh v. (D) through LRs v. Ram Kishore Agrawal & Ors.,* **(2016) SCC OnLine Chh 1740 ;** *Naresh Chandra Gautam v. Chhote Khan,* **(2003) SCC OnLine Utt 12 ;** *Ramagya Tiwari v. Shib Kumar Sah & Ors.*, **(2018) SCC OnLine Jah 578 ;** *Lalchand Sha & Ors. v. Kalabati Devi & Ors.,* **(2008) 2 Gau LR 561 ;** *J Mnthamma & Anr. v. Bayya Iiglamma & Ors.*;

A *Vaish Aggarwal Panchayat v. Inder Kumar and others*, **AIR 2015 SC 3357 : [2015] SCR 637 ;** *Hareendran and others v. Sukumaran and others,* **(2018) 14 SCC 187 – referred to.**

6.2 In case averments in the plaint indicate that suit is B **barred, it is liable to be rejected before the stage of Section 9A of CPC comes. Thus, the stage at which Order VII Rule 11(d) has to be applied, is at the threshold and the scope of Section 9A is somewhat limited and different. Though the scope of rejection of plaint under Order VII Rule 11(d) is broad enough** C **which includes rejection of the plaint in case any law bars it, however, only the averments in the plaint have to be seen, nevertheless Section 9A is limited in its operation as to the jurisdiction of the Court to entertain a suit. [Para 65] [852-D-E]**

D *Ramesh B. Desai and Ors. v. Bipin Vadilal Mehta and Ors.,* **(2006) 5 SCC 638 : [2006] 3 Suppl. SCR 414 ;** *Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by Lrs.,* **AIR 2019 SC 1430 ;** *N.V. Srinivasa Murthy & others v. Mariyamma (Dead) by proposed LRs. & Ors.,* **(2005) 5 SCC 548 : [2005] 1 Suppl. SCR 411 ;** *Suman Devi v. Manisha Devi & others,* **(2018) 9** E **SCC 808 : [2018] 10 SCR 26 – held inapplicable.**

IN RE: DECISION IN FORESHORE COOPERATIVE HOUSING SOCIETY LIMITED

7.1 In *Foreshore Cooperative Housing Society Limited*, F **decision of the court in *Pandurang Dhondi Chougule* and other decisions have been relied on. In *Pandurang Dhondi Chougule*, the Constitution Bench has observed that plea of limitation is a plea of law, which concerns the jurisdiction of the court which tries the proceedings. The Constitution Bench has not laid down** G **that question of limitation, and res judicata have to be tried as a preliminary issue. It cannot be disputed that the question of res judicata and limitation pertains to the question of jurisdiction of the Court to pass a decree in the proceeding. In case proceeding is barred by limitation, the Court has no jurisdiction to pass a decree. The court had inherent jurisdiction and in the course of** H **proceeding how the jurisdiction is to be exercised and what**

amounts to a case of a wrong decision in the course of the exercise of jurisdiction is another colour in which jurisdictional error has been gauged in *Pandurang Dhondi Chougule*. It was not a case of want of the existence of jurisdiction to decide the issue. The question of limitation and res judicata, are to be decided within the realm of exercise of jurisdiction following the law. The finding on these pleas may oust the jurisdiction of the Court to pass a decree as other laws bar it. Thus, these pleas can be termed as concerning with the question of jurisdiction, in the exercise thereof they have to be decided. The decision renders no help to espousing the cause of the respondents. In *Foreshore Cooperative Housing Society Limited,* the court has wrongly applied a different colour of jurisdiction used under section 115 CPC which was dealt with in *Pandurang Dhondi Chougule* case. It is a mismatch and does not merge with the context of provisions of section 9A CPC. [Para 66 and 67] [852-G; 853-G-H; 854-A-D]

Foreshore Cooperative Housing Society Limited v. Praveen D. Desai (Dead) through Legal Representatives and others, **(2015) 6 SCC 412 : [2015] 5 SCR 1075 ;** *Foreshore Cooperative Housing Society Limited v. Praveen D. Desai,* **(2009) 1 AIR Bom R 477 ;** *Royal Palms (India) P. Ltd. v. Bharat Shah,* **(2009) 2 Bom CR 622 ;** *Mukund Ltd. v. MIAL,* **(2011) 2 Mh.L.J. 936,** *Jagshi Shah v. Shaan Builders,* **(2012) 3 Bom CR 770 ;** *Ferani Hotels P. Ltd. and another v. Nusli Neville Wadia and others,* **(2012) SCC OnLine Bom 1994 ;** *Naresh Lachnmandas Aswani v. Haridas Aswani and others,* **(2013) SCC OnLine Bom 1368 ;** *Union of India and others v. N.K. Bhog and others,* **(2015) SCC OnLine Bom 664 – Not correct law**

Kamalakar Eknath Salunkhe v. Baburav Vishnu Javalkar and Ors., **(2015) 7 SCC 321 – affirmed**

Meher Singh v. Deepak Sawhney, **(1998) 3 MLJ 940 ;** *Sudesh v. Abdul Aziz*, **(2001) 1 Mh.L.J. 324 – overruled.**

Smithkline Beecham Consumer Consumer Healthcare v. Hindustan Liver Limited, **2002 SCC OnLine Bom**

1337 ; *Shraddha Associates v. St. Patrick's Town Co-operative Housing Society Ltd.,* **(2003) 2 Mh.L.J. 219 – disapproved.**

Raja Soap Factory v. S.P. Shantharaj, **AIR 1965 SC 1449 : [1965] SCR 800 ;** *A.R. Antulay v. R.S. Nayak and Anr.,* **(1988) 2 SCC 602 : [1988] 1 Suppl. SCR 1 ;** *Delhi Special Police Establishment, New Delhi v. Lt. Col. S.K Loraiya,* **(1972) 2 SCC 692 : [1973] 1 SCR 1010 ;** *Smt. Ujjam Bai v. State of Uttar Pradesh,* **AIR 1962 SC 1621 : [1963] SCR 778 ;** *Anowar Hussain v. Ajay Kumar Mukherjee,* **AIR 1965 SC 1651 ;** *M.L. Sethi v. R.P. Kapur,* **(1972) 2 SCC 427 : [1973] 1 SCR 697 ;** *Hari Prasad Mulshankar Trivedi v. V.B. Raju and Ors.,* **(1974) 3 SCC 415:[1974] 1 SCR 548 ;** *Ittyavira Mathai v. Varkey Varkey and Anr.,* **AIR 1964 SC 907 : [1964] SCR 495 ;** *Maqbul Ahmad and others v. Onkar Pratap Narain,* **AIR 1935 PC 85 ;** *Manick Chandra Nandy v. Debdas Nandy and others,* **(1986) 1 SCC 512 ;** *ITW Signode India Ltd. v. Collector of Central Excise,* **(2004) 3 SCC 48 : [2003] 5 Suppl. SCR 751 ;** *Kamlesh Babu and others v. Lajpat Rai Sharma and others,* **(2008) 12 SCC 577 : [2008] 6 SCR 653 ;** *Indian Farmers Fertilizer Cooperative Limited v. Bhadra Products,* **(2018) 2 SCC 534 : [2018] 1 SCR 848 ;** *Pandurang Dhondi Chougule and Ors. v. Maruti Hari Jadhav and Ors*, **AIR 1966 SC 153 : [1966] SCR 102 – referred to.**

IN RE: LITERAL INTERPRETATION

8. When literal meaning in Section 9A, CPC is taken, it is apparent that expression jurisdiction has been used in the company to entertain. Both the expressions taken together have to be given the meaning i.e., the Court should have the power or inherent jurisdiction to receive a suit for consideration to initiate a trial. When tested on the anvil of hardship caused by the exclusion of question of limitation from the jurisdiction to entertain, being tested in the right spirit, it rebounds upon to negate the submission. [Para 76] [863-F]

Rohitash Kumar and others v. Om Prakash Sharma and others, **(2013) 11 SCC 451 : [2012] 13 SCR 47 ;** *Nalinakhya Bysack v. Shyam Sundar Haldar,* **AIR 1953 SC 148 : [1953] SCR 533 – distinguished.**

Case Law Reference

[2015] 5 SCR 1075	**Not correct law**	**Para 1**
(2015) 7 SCC 321	**affirmed**	**Para 1**
[1966] SCR 102	**referred to**	**Para 1**
[1965] SCR 800	**referred to**	**Para 21**
[1988] 1 Suppl. SCR 1	**referred to**	**Para 22**
[1973] 1 SCR 1010	**referred to**	**Para 23**
[1963] SCR 778	**referred to**	**Para 24**
AIR 1965 SC 1651	**referred to**	**Para 25**
[1973] 1 SCR 697	**referred to**	**Para 26**
[1968] SCR 505	**referred to**	**Para 31**
(1971) 3 SCC 124	**referred to**	**Para 31**
[2008] 9 SCR 652	**referred to**	**Para 34**
[1976] 1 SCR 427	**affirmed**	**Para 35**
[1974] 1 SCR 548	**held inapplicable**	**Para 37**
[1971] SCR 557	**referred to**	**Para 38**
[1969] SCR 92	**referred to**	**Para 39**
[2007] 3 SCR 399	**held inapplicable**	**Para 40**
[1999] 2 SCR 1189	**relied on**	**Para 42**
[1959] SCR 811	**relied on**	**Para 49**
[2002] 4 Suppl. SCR 260	**held inapplicable**	**Para 55**
[2006] 2 SCR 886	**referred to**	**Para 56**
[1998] 3 SCR 187	**referred to**	**Para 56**
[2019] 1 SCR 463	**referred to**	**Para 56**
[1962] SCR 747	**referred to**	**Para 56**

A	**[1964] SCR 409**	**referred to**	**Para 57**
	[2004] 6 Suppl. SCR 1065	**referred to**	**Para 58**
	[2014] 9 SCR 221	**referred to**	**Para 59**
	[2015] SCR 637	**referred to**	**Para 61**
B	**(2018) 14 SCC 187**	**referred to**	**Para 63**
	[2006] 3 Suppl. SCR 414	**held inapplicable**	**Para 64**
	AIR 2019 SC 1430	**held inapplicable**	**Para 65**
	[2005] 1 Suppl. SCR 411	**held inapplicable**	**Para 65**
C	**[2018] 10 SCR 26**	**held inapplicable**	**Para 65**
	[1964] SCR 495	**referred to**	**Para 68**
	AIR 1935 PC 85	**referred to**	**Para 68**
	(1986) 1 SCC 512	**referred to**	**Para 69**
D	**[2003] 5 Suppl. SCR 751**	**referred to**	**Para 70**
	[2008] 6 SCR 653	**referred to**	**Para 71**
	[2018] 1 SCR 848	**referred to**	**Para 72**
	[2012] 13 SCR 47	**distinguished**	**Para 76**
E	**[1953] SCR 533**	**distinguished**	**Para 76**

CIVIL APPELLATE/INHERENT JURISDICTION : Special Leave Petition (Civil) Nos. 31982-31983 of 2013.

From the Judgment and Order dated 19.09.2013 and 20.09.2013 F of the High Court of Judicature at Bombay in AN No. 414 of 2008 and in SN No. 414 of 2008 respectively.

With

Review Petition (Civil) No. 2856 of 2015 in Civil Appeal No. 3396 of 2015.

G

F. S. Nariman, Dr. A. M. Singhvi, Rakesh Dwivedi, Mukul Rohatgi, Gopal Jain, Sr. Advs., Rohan Kelkar, Ms. Nandini Gore, Ms. Tahira Karanjawala, Ms. Natasha Sehrawat, Arjun Sharma, Subhash Sharma, Ms. Olga Lume Pereira, Karamveer Singh Anand, Jasvir Singh Sabharwal, M/S. Karanjawala & Co., Mahesh Agarwal, H Ms. Hemlata Jain, Ankur Saigal, Nooruddin Dhilla, Anirudh Hariani,

Ms. Sukhda Wagle, Ms. Parul Shukla, E. C. Agrawala, Ms. Purnima Bhat, Ms. Garima Prashad, Kaushik Poddar, Abhimanyu Bhandari, Avishkar Singhvi, Ms. Roohina Dua, Cheitanya Madan, Ms. Nattasha Garg, Ms. Gauri Rishi, Ms. Ranjeeta Rohatgi, Arav Pandit, Naveen Kumar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ARUN MISHRA, J.

1. The reference has been made by a Division Bench of this Court vide order dated 17.8.2015, doubting the correctness of the decision of this Court in *Foreshore Cooperative Housing Society Limited v. Praveen D. Desai (Dead) through Legal Representatives and others,* (2015) 6 SCC 412 with respect to the interpretation provisions contained in Section 9A of the Code of Civil Procedure, 1908 (for short, 'the CPC') as inserted by the Maharashtra Amendment Act, 1977. It has been opined that the word "jurisdiction" under Section 9A is wide enough to include the issue of limitation as the expression has been used in the broader sense and is not restricted to conventional definition under pecuniary or territorial jurisdiction, the decision in *Kamalakar Eknath Salunkhe v. Baburav Vishnu Javalkar and Ors.,* (2015) 7 SCC 321, taking contrary view, is *per incuriam* in view of the larger Bench decision in *Pandurang Dhondi Chougule and Ors. v. Maruti Hari Jadhav and Ors,* AIR 1966 SC 153 as well as other larger Bench decisions.

2. In *Kamalakar Eknath Salunkhe* (supra) this Court has opined that issue of limitation cannot be decided as a preliminary issue of jurisdiction under Sec 9, Reference has been made because of divergence in views.

3. The question arises for consideration as to the interpretation of expression 'jurisdiction of the Court to entertain such suit' used in Section 9A of CPC. Section 9A had been introduced initially by the Code of Civil Procedure (Maharashtra Amendment) Act, 1970 and after that reintroduced with slightly modified terms by the Code of Civil Procedure (Maharashtra Amendment) Act, 1977. After its repeal it had been re-enacted with effect from 19.12.1977. It was felt necessary to reintroduce it after the extensive amendment made by the Parliament in CPC by way of Amendment Act, 1976 with effect from 1.2.1977.

A 4. Before we dilate further on the issue, we consider it appropriate to refer to the Statement of Objects and Reasons under the original enactment at the time of introduction of Section 9A in the year 1970. Following is the Statement of Objects and Reasons as mentioned in the Gazette dated 15.12.1969:

B "STATEMENT OF OBJECTS AND REASONS

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 to grant interim relief cannot or need not go into the question of jurisdiction. Sometimes declaratory
C 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 an injunction in a suit filed without such valid notice, which gives
D 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. This practice of granting injunctions, without going into the question of
E 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 interim relief, the Court shall determine that question first.

F S.K. WANKHEDE

Nagpur, dated the 6th December 1969 Minister for Law.

S.H. BELAVADI

Nagpur dated the 15th December 1969 Secretary

G Maharashtra Legislative Assembly."

The reason for the introduction of the provisions of Section 9A in Maharashtra was that the suits used to be filed without notice under Section 80 of CPC. It related to bar on the institution of the suit without notice. After expiry of the period of notice, the plaintiff used to be
H allowed to withdraw the suit with liberty to file fresh one in the

intervening period. The Court used to grant *ad interim* injunction and continue the same. The practice of granting an injunction without going into the question of jurisdiction has led to grave abuse of the provisions of law. Thus, it was proposed that in case question of jurisdiction is raised at the hearing of any applications for granting or setting aside an order granting interim relief, the Court shall determine that question first. The provisions of Section 9A, as initially introduced in 1970, are extracted hereunder:

> "9A.*(1)* 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 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. 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."

5. The Statement of Objects and Reasons for re-introduction of Section 9A in the year 1977 is the same. It has been re-enacted in a slightly revised form. The Statement of Objects and Reasons of the re-enacted provisions in the year 1977 is extracted hereunder:

> "STATEMENT OF OBJECTS AND REASONS
>
> The Code of Civil Procedure, 1908 (V of 1908) has been amended, in its application to the State of Maharashtra, by the Code of Civil Procedure (Hyderabad Amendment) Act, 1953 (Hyd. XI of 1953), read with the Code of Civil Procedure (Extension of Hyderabad Amendment) Act, 1964 (Mah. VI of 1965) and by the Code of Civil Procedure (Maharashtra Amendment) Act, 1970 (Mah. XXV of 1970). By the first State Act of 1953, the proviso to section 60(1) is amended to exempt the amounts payable under the policies issued in pursuance of

A the Rules for the Hyderabad State Life Insurance and Provident Fund from attachment in execution of a decree. By the second State Act of 1970, a new section 9-A has been inserted for providing that whereby an application, in which interim relief is sought or is sought to be set aside in any suit and objection to jurisdiction is taken, such issue should be decided by the Court as a preliminary issue at the hearing of the application. The Code also stands amended in its application to the Bombay area of this State by the Code of Civil Procedure (Bombay Amendment) Act, 1948 (Bom. LX of 1948) and in its application to the Hyderabad area of this State by the Code of Civil Procedure (Hyderabad Second Amendment) Act, 1953 (Hyd. XVIII of 1953). The first State Act of 1948 amends the proviso to section 60(1) to exempt from attachment, stipends, and gratuities allowed to pensioners of a local authority. The second State Act of 1953 also amends the proviso to section 60(1) to exempt from attachment, the pension granted or continued by the Central Government, the Government of the former State of Hyderabad or any other State Government on account of past services or present infirmities or as a compassionate allowance.

2. The Code has been extensively amended by the Code of Civil Procedure (Amendment) Act, 1976 (CIV of 1976) enacted by Parliament. Section 97 of this Amendment Act provides *interalia* that any amendments made in the Code by a State Legislature before the commencement of that 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, are 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 the same section in a slightly revised form.

Clause 4.- As the amendment made by the State Act of 1948 is included in the proviso to section 60(1) by the Central Amendment Act of 1976, it is proposed to repeal this Act and the amendment made by it.

Clauses 5 and 6.- Clause 5 formally repeals the two-State Acts of 1953 by which the proviso to section 60(1) was amended to give some additional exemptions from attachment. Clause 6 brings back these amendments with the necessary drafting changes.

HUSSAIN M. DALWAI,

Dated the 5th of October 1977. Minister for Law and Judiciary."

The provisions of Section 9A as re-enacted in the year 1977 contained a non-obstante clause concerning provisions of CPC or any other law for the time being in force. Section 9A as re-introduced in the year 1977 is extracted hereunder:

"**9A. Whereof 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

A 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 B 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 C of the preliminary issue as to the jurisdiction."

The provisions of Section 9A enable Court, dealing with the applications for granting or setting aside interim injunction or for appointment of a receiver or otherwise, to deal with the objection as to "jurisdiction of the Court to entertain such suit", as preliminary issue D and it shall not adjourn the matter to the hearing of the suit. Pending determination of the preliminary issue as to jurisdiction, the Court is competent as per section 9A(2) to grant interim relief as it may consider necessary.

6. The State of Maharashtra on 27.06.2018 by the promulgation E of "Code of Civil Procedure (Maharashtra Amendment) Ordinance, 2018" has deleted Section 9-A of the Code (in its application to the State of Maharashtra). Section 3 of the Ordinance provided as under:

"3. Notwithstanding the deletion of section 9A of the principal Act, -

F

"(1) Where consideration of a preliminary issue framed under section 9A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Ordinance, 2018 (hereinafter, in this section, referred to as "the Amendment Ordinance"), the said issue shall be deemed to be an issue framed G under Order XIV of the principal Act and shall be decided by the Court, as it deems fit, along with all other issues, at the time of final disposal of the suit itself…"

It was provided that preliminary issue framed under section 9A shall be treated as an issue under Order XIV of CPC and be decided H by the Court with other issues as it may deem fit. The above Ordinance

was replaced by the Code of Civil Procedure (Maharashtra Amendment) Act, 2018 (Maharashtra Act No.LXI of 2018) (the 1st Amendment Act) on 29.10.2018.

7. On 15.12.2018, the State of Maharashtra enacted the "Code of Civil Procedure (Maharashtra Amendment) (Amendment) Act, 2018" (the 2nd Amendment Act). Section 2 of Act reads as follows:

> "2. In section 3 of the Code of Civil Procedure (Maharashtra Amendment) Act, 2018, for clause (1), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 27th June, 2018, being the date of commencement of the said Act, namely :-
>
> "(1) where consideration of a preliminary issue framed under section 9A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Act, 2018 (hereinafter, in this section, referred to as "the Amendment Act"), the said issue shall be decided and disposed of by the Court under Section 9A, as if the said section 9A has not been deleted."

It is provided that if the court has ordered to decide an issue as a preliminary issue before the date of deletion of section 9A, it shall be decided by the court as a preliminary issue. Thus, it has become necessary to decide the issue.

8. The provisions contained in Order XIV Rule 2 of CPC also deals with the framing of issues and the questions which can be tried as a preliminary issue before the amendment made in the year 1977 in CPC provisions. Rule 2 of Order XIV reads thus:

> "**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 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."
>
> (emphasis supplied)

It is apparent from the pre-amended provisions of Order XIV Rule 2 that only a question of law could have been tried as a preliminary issue, not the question of facts or a mixed question of law and facts, that too, when the case or part may be disposed of by a decision on the issue of law.

A 9. The amendment in 1976 in CPC came into force on 1.2.1977. The amended Rule 2 of Order XIV is extracted hereunder:

> **"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."

A significant departure has been made in the amended provisions contained in Order XIV Rule 2. Now it mandates the Court to pronounce judgment on all issues notwithstanding that a case may be disposed of on a preliminary issue. The intendment is to avoid remand in the appealable case for deciding the other issues. In case the necessity arises, Order XIV Rule 2(2) enables the Court to decide the issue of law as a preliminary issue in case the same relates to (1) the jurisdiction of the Court or (2) a bar to the suit created by any law for the time being in force. After the amendment made in CPC in the year 1977, it contains two-fold provision, the question of jurisdiction to entertain the suit has been separated under Rule 2(2)(a) from the expression in Rule 2(2)(b) "a bar to the suit created by any law for the time being in force."

10. In *Kamalakar Eknath Salunkhe* (supra), as to the interpretation of Section 9A, it has been opined that word jurisdiction in Section 9A is used in a narrow sense as to maintainability, only on the question of inherent jurisdiction and does not contemplate issues of limitation. The Court has observed:

> "16. The expression "jurisdiction" in Section 9-A 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 regarding the value, place, and nature of the subject matter. The classification into territorial jurisdiction, pecuniary jurisdiction, and jurisdiction over the subject-matter is fundamental. Undoubtedly, the jurisdiction of a court may get restricted by a variety of circumstances expressly mentioned in a statute, charter, or commission. The inherent jurisdiction of a court depends upon the pecuniary and territorial limits laid down by law and subject-matter of the suit. While the suit might be barred due to non-compliance with specific 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 in which the court has inherent jurisdiction to entertain but by operation of the law of limitation, it would not warrant adjudication.

20. A perusal of the Statement of Objects and Reasons of the Amendment Act would clarify that Section 9-A talks of maintainability only on the question of inherent jurisdiction and does not contemplate issues of limitation. Section 9-A has been inserted in the Code to prevent the abuse of 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.

21. In the instant case, the preliminary issue framed by the trial court is about 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 9-A of the Code. The High Court has erred in not considering the statutory ambit of Section 9-A while approving the preliminary issue framed by the trial court and thus, rejecting the writ petition filed by the appellant."

11. Where in the recent decision of *Foreshore Cooperative Housing Society Limited* (supra), it has been held that decision in *Kamalakar Eknath Salunkhe* (supra) is contrary to the law. The

word jurisdiction in Section 9A is used in a broader sense. It has also been held that Section 9A is mandatory and a complete departure from the provisions of Order XIV Rule 2. The question of limitation is synonym with jurisdiction, and if raised, the Court has to try it as a preliminary issue under Section 9A as applicable to the State of Maharashtra. This Court in *Foreshore Cooperative Housing Society Limited* (supra) has observed:

> "56. With great respect, we are of the view that the decision rendered by the Division Bench in *Kamalakar Eknath Salunkhe* v. *Baburav Vishnu Javalkar*, (2015) 7 SCC 321 is contrary to the law settled by the Constitution Bench and three-Judge Benches of this Court, in *Pandurang Dhondi Chougule* v. *Maruti Hari Jadhav* (five-judge Bench), AIR 1966 SC 153 followed by other Division Benches in *Manick Chandra Nandy* v. *Debdas Nandy*, (1986) 1 SCC 512, *NTPC Ltd.* v. *Siemens Aktiengesellschaft*, (2007) 4 SCC 451, *Official Trustee* v. *Sachindra Nath Chatterjee*, AIR 1969 SC 823, *ITW Signode India Ltd.* v. *CCE,* (2004) 3 SCC 48 and *Kamlesh Babu* v. *Lajpat Rai Sharma,* (2008) 12 SCC 577. The Constitution Bench decision and other decisions given by the 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.
>
> 61. Mr Nariman, learned Senior Counsel appearing for the appellant put heavy reliance on the decision in *Ramesh B. Desai* v. *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 decision as mentioned earlier, this Court was considering the provision of Order 14 Rule 2 CPC. While interpreting the provision of Order 14 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 14 Rule 2 CPC. As discussed above, Section 9-A of the Maharashtra Amendment Act makes a complete departure from the procedure provided under Order 14 Rule 2 CPC. Section 9-A mandates the court to decide the

jurisdiction of the court before proceeding with the suit and granting interim relief by way of injunction.

62. At the cost of repetition, we observe that Section 9-A provides a self-contained scheme with a nonobstante clause which mandates the court to follow the provision. It is a complete departure from the provisions contained in Order 14 Rule 2 CPC. In other words, the nonobstante clause inserted by the Maharashtra Amendment Act of 1977 in Section 9-A and the express mandate of the section, the law intends to decide the issue relating to the jurisdiction of the court as a preliminary issue notwithstanding the provision contained in Order 14 Rule 2 CPC. However, it is made clear that in other cases where the suits are governed by the provisions of Order 14 Rule 2 CPC, it is the discretion of the court to decide the issue based on the law as a preliminary issue."

It has also been observed that where the suits are governed by the provisions of Order XIV Rule 2, it is the discretion of the Court to decide the issue based on the law as a preliminary issue.

SUBMISSIONS

12. It has been submitted by Shri F.S. Nariman, learned senior counsel appearing on behalf of the petitioner that decision in *Foreshore Cooperative Housing Society Limited* (supra) cannot be said to be laying down the law correctly. The CPC confers no jurisdiction upon the Court to try a suit on a mixed question of law and facts as a preliminary issue. It is further submitted that the word jurisdiction has been used in a narrow sense and Section 9-A does not cover the question of a suit being barred by any other provision of law. The decision in *Meher Singh v. Deepak Sawhney,* 1998 (3) MLJ 940 and *Smithkline Beecham Consumer Consumer Healthcare v. Hindustan Liver Limited*, 2002 SCC OnLine Bom 1337 of the Bombay High Court are directly in contravention to the law settled by this Court. The plea of limitation is a mixed question of law and facts and cannot be decided as an abstract principle divorced from the facts. The starting point of limitation has to be ascertained, which is entirely a question of facts in each case. In *Pandurang Dhondi Chougule* (supra), this Court was concerned with the interpretation of the scope of Section 115 of the Code. Because of the provisions of Section 115 when interference can be made in a revision, it has been observed that limitation concerns

jurisdiction. The decision in *Kamalakar Eknath Salunkhe* (*supra*) cannot be said to be *per incuriam,* thus, it was not open to the Division Bench to take a different view in the *Foreshore Cooperative Housing Society Limited* (*supra*) when the Maharashtra legislature consciously chose to re-enact Section 9A, it has used the expression jurisdiction and provision as to the suit was barred by any other law for the time being in force has not been added which included the law of limitation also. Given the amended Order XIV Rule 2, the preliminary issue can only be a pure question of law.

13. Shri Rakesh Dwivedi, Shri Mukul Rohatgi, Dr. Abhishek Manu Singhvi, and Shri Gopal Jain, learned senior counsel appearing on behalf of respondents submitted that Order XIV Rule 2, CPC has no relevance for construing the expression an objection to the jurisdiction of the Court to entertain such suit. The provision enacted in 1970 and re-enacted in the year 1977 is the same. The object of the re-introduction was to maintain and continue what was enacted before the CPC Amendment Act of 1976. The question of limitation and *res judicata* is the one which can be decided as a preliminary issue under Section 9A of CPC. It is submitted that under Order XIII Rule 1, parties are required to produce the documents in original on or before the settlement of the issues. Under Order XII, parties can give notice for admitting the documents. Under Order XII Rule 6, even a judgment can be given on admitted facts. These are the stages before framing the issue under Order XIV.

14. Consequently, under Order XIV Rule 2(2), the Court while trying issues would be entitled to look into the admitted facts in any case. Under Order XIV Rule 4, the Court can examine a witness and documents before framing issues. Therefore, there is no good reason to prevent the Court from deciding issues of limitation based on documents produced, especially if they are admitted documents.

15. It is further submitted on behalf of respondents that the expression jurisdiction used in Section 9A need not be qualified by the word inherent, that would amount to re-writing the Statute and would be against the contextual meaning to be given to Section 9A. The object for introducing the provision was not limited to objections about inherent jurisdiction, but to cover bar created by the statute and Section 80 is an illustration. Thus, the expression 'barred under any law for the time being in force' used in Order XIV Rule 2(2)(b) is covered by Section

9A. Concerning expression used in Order XIV Rule 2(2), the Court may decide the issue of law as a preliminary issue that has not been used in Section 9A. Thus, the provision deploys a broader spectrum. It is further submitted that the speedy conclusion of the trial is vital if a case can be decided on the point of jurisdiction as also of limitation, then there is no rationale for keeping the case pending. Thus, Section 9A buttress the idea of speedy justice. As President assent has been received for the introduction of Section 9A, the same will have an overriding effect on Order XIV Rule 2. The provision cannot be said to be irrational or unreasonable in any manner. In case plaint indicates that it is barred by limitation, whether the fact can be seen and what can be tried as a preliminary issue would depend on the nature of the provision of the statute and the public policy behind it. Judgment in *Foreshore Cooperative Housing Society Limited* (supra) has laid down the law correctly.

IN RE: MEANING OF WORD JURISDICTION

16. Jurisdiction is the power to decide and not merely the power to decide correctly. Jurisdiction is the authority of law to act officially. It is an authority of law to act officially in a particular matter in hand. It is the power to take cognizance and decide the cases. It is the power to decide rightly or wrongly. It is the power to hear and determine. Same is the foundation of judicial proceedings. It does not depend upon the correctness of the decision made. It is the power to decide justiciable controversy and includes questions of law as well as facts on merits. Jurisdiction is the right to hear and determine. It does not depend upon whether a decision is right or wrong. Jurisdiction means power to entertain a suit, consider merits, and render binding decisions, and "merits" means the various elements which enter into or qualify plaintiff's right to the relief sought. If the law confers a power to render a judgment or decree, then the court has jurisdiction. The court must have control over the subject matter, which comes within classification limits of law under which Court is established and functions.

17. The word jurisdiction is derived from Latin words "Juris" and "dico," meaning "I speak by the law" and does not relate to rights of parties as between each other but to the power of the court. Jurisdiction relates to a class of cases to which a particular case belongs. Jurisdiction is the authority by which a judicial officer takes cognizance and decides the cases. It only presupposes the existence of a duly constituted court

having control over subject-matter which comes within classification limits of the law under which court has been established. It should have control over the parties litigant, control over the parties' territory, it may also relate to pecuniary as well as the nature of the class of cases. Jurisdiction is generally understood as the authority to decide, render a judgment, inquire into the facts, to apply the law, and to pronounce a judgment. When there is the want of general power to act, the court has no jurisdiction. When the court has the power to inquire into the facts, apply the law, render binding judgment, and enforce it, the court has jurisdiction. Judgment within a jurisdiction has to be immune from collateral attack on the ground of nullity. It has co-relation with the constitutional and statutory power of tribunal or court to hear and determine. It means the power or capacity fundamentally to entertain, hear, and determine.

18. Jurisdiction to entertain is distinguished from merits, error in the exercise of jurisdiction or excess of jurisdiction.

19. Section 9 of the Code of Civil Procedure deals with jurisdiction and empowers the courts to try all civil suits unless barred. Section 9 is extracted hereunder:

"**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.- A 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."

20. The words used in section 9 of the Code of Civil Procedure of 1882 "barred by any enactment for the time being in force" are substituted in the Code of Civil Procedure of 1908 by "either expressly or impliedly barred." Thus, the word "jurisdiction" under section 9 correlates with the cognisance, i.e., is not barred either expressly or impliedly.

21. In *Raja Soap Factory v. S.P. Shantharaj*, AIR 1965 SC 1449 at 1450, it is observed that the jurisdiction of a court means the extent of the authority of a court to administer justice prescribed concerning the subject-matter, pecuniary value, and local limits.

22. In *A.R. Antulay v. R.S. Nayak and Anr.*, (1988) 2 SCC 602, it has been observed that expression jurisdiction or the bar to determine is verbal cast of many colours. Jurisdiction is a legal shelter – a power to bind despite a possible error in the decision. The Court observed:

> "142. The expression "jurisdiction" or the power to determine is, it is said, a verbal cast of many colours. In the case of Tribunal, the error of law might become not merely an error in the jurisdiction but might partake character in error of jurisdiction. However, otherwise, jurisdiction is a 'legal shelter' — a power to bind despite a possible error in the decision. The existence of jurisdiction does not depend on the correctness of its exercise. The authority to decide embodies a privilege to bind despite the error, a privilege which is inherent in and indispensable to every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it is wrong. In *Malkarjun Bin Shidramappa v. Narahari Bin Shivappa*, (1900) 27 IA 216 the executing court had, quite wrongly, held that a particular person represented the estate of the deceased judgment-debtor and put the property for sale in execution. The Judicial Committee said:
>
> In so doing the court was exercising its jurisdiction. It made a sad mistake, it is true, but a court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken the decision, however wrong, cannot be disturbed."

23. In *Delhi Special Police Establishment, New Delhi v. Lt. Col. S.K Loraiya*, (1972) 2 SCC 692, the word jurisdiction has been interpreted in the context of Section 125 of the Army Act to signify the original jurisdiction to take cognizance of a case. Following is the observation:

> "11. Section 125 of the Army Act provides that when a criminal court and a Court-Martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding

A the army, any corps, division or independent brigade in which the accused person is serving to decide before which court the proceedings shall be instituted, and if that officer decides that they should be instituted before a Court-Martial, he will direct that the accused person shall be detained in military custody. Section 122(1) and 125 both find place in Chapter X of the Army
B Act. Section 125 supports our view that the Court-Martial alone has jurisdiction to decide the issue of limitation under Section 122(1). The word "jurisdiction" in Section 125 really signifies the initial jurisdiction to take cognizance of a case. To put it in other words, it refers to the stage at which proceedings are instituted
C in a court and not to the jurisdiction of the ordinary criminal court and the Court-Martial to decide the case on merits. It appears to us that Section 549(1) should be construed in the light of Section 125 of the Army Act. Both the provisions have in mind the object of avoiding a collision between the ordinary criminal court and the Court-Martial. So both of them should receive a
D similar construction."

24. In *Smt. Ujjam Bai v. State of Uttar Pradesh*, AIR 1962 SC 1621, the word jurisdiction employed in Section 9, CPC came up for consideration. The Court held that jurisdiction means the authority to
E decide and observed:

"(15) Now, I come to a controversial area. What is the position with regard to an order made by a quasi-judicial authority in the undoubted exercise of its jurisdiction in pursuance of a provision of law which is admittedly intra vires? It is necessary first to
F clarify the concept of jurisdiction. Jurisdiction means authority to decide. Whenever a judicial or quasi-judicial tribunal is empowered or required to enquire into a question of law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari but are binding until reversed on appeal. Where a quasi-judicial
G authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion whether it is wrong in law or in fact. The question, whether a tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these
H facts, but upon their nature, and it is determinable "at the

commencement, not at the conclusion, of the inquiry'. (Rex v. Bolten [1841] I Q.B. 66. Thus, a tribunal empowered to determine claims for compensation for loss of office has jurisdiction to determine all questions of law and fact relating to the measure of compensation and the tenure of the office, and it does not exceed its jurisdiction by determining any of those questions incorrectly, but it has no jurisdiction to entertain a claim for reinstatement or damages for wrongful dismissal, and it will exceed its jurisdiction if it makes an order in such terms, for it has no legal power to give any decision whatsoever on those matters……

(Halsbury's Laws of England, 3rd Edn. Vol. 11 page 59). The characteristic attribute of judicial act or decision is that it binds, whether it be right or wrong. An error of law or fact committed by a judicial or quasi-judicial body cannot, in general, be impeached otherwise than on appeal unless the erroneous determination relates to a matter on which the jurisdiction of that body depends. These principles govern not only the findings of inferior courts stricto sensu but also the findings of administrative bodies which are held to be acting in a judicial capacity. Such bodies are deemed to have been invested with power to err within the limits of their jurisdiction; and provided that they keep within those limits, their decisions must be accepted as valid unless set aside on appeal. Even the doctrine of res judicata has been applied to such decisions. (See Livingstone v. Westminister Corporation [1904] 2 K.B. 109; Re Birkenhead Corporation (1952) Ch. 359 Re 56 Denton Road Twickenham [1953] Ch. 51 Society of Medical Officers of Health v. Hope [1959] 2 W.L.R. 377. …."

(emphasis supplied)

25. In *Anowar Hussain v. Ajay Kumar Mukherjee*, AIR 1965 SC 1651, it was held that expression jurisdiction does not mean the power to do or order the act impugned, but generally the authority of the Judicial Officer to act in the matter.

26. In *M.L. Sethi v. R.P. Kapur,* (1972) 2 SCC 427, the Court recognized that the word jurisdiction is a verbal coat of many colours. In *Hari Prasad Mulshankar Trivedi v. V.B. Raju and Ors.,* (1974)

A 3 SCC 415, it was observed that expanse of jurisdiction would take colour from its context.

27. The jurisdiction in Section 9A must be considered in the context it has been used. The word jurisdiction has to be interpreted in the context which has been used in the various provisions. The word B "jurisdiction" has been used in CPC in several provisions. Section 9 deals with the jurisdiction to try all suits by a civil court except those which are barred. Section 10 prohibits a Court from proceeding with the trial. Section 11 and *Explanation VIII* are based upon the principle of *res judicata*. Section 21 defines objections to a jurisdiction such as the place of suing and competence of Court regarding the pecuniary C limits of its jurisdiction. Section 86 prohibits a suit against a foreign State in any Court otherwise competent to try the suit except with the consent of Central Government. Section 135 refers to the matter pending for determination having jurisdiction therein. Order II Rule 3(2) contains a provision concerning the jurisdiction of the Court as regards D the suit. Order VII Rule 11(d) deals with the rejection of the plaint on the ground being barred by law. Order VIII Rule 3-A(4) provides a defendant to put forth the objection as to the jurisdiction. Order XIV Rule 2 distinguishes between preliminary issues relating to the jurisdiction of the Court or a bar to the suit created by any law for the time being E in force. Order XXIII Rule 3-A provides that no suit shall lie to set aside a compromise decree. There are various other provisions in which the expression has been used.

IN RE: "ENTERTAIN THE SUIT"

28. When we consider provisions in Section 9A, the word F jurisdiction is qualified with "to entertain the suit," the expression used is 'jurisdiction to entertain the suit.' The Court has jurisdiction to entertain a suit when it has jurisdiction to receive it for consideration. If at the threshold, the Court cannot consider it, it can be said that the Court has no jurisdiction to entertain the case. It is like a suit is cognizable by Revenue Court, but it is filed in Civil Court, the Court G cannot consider it nor can receive it for trial. It is like the jurisdiction to entertain the criminal appeal when the Court is not having inherent jurisdiction to consider the case; it can be said that the Court has no jurisdiction to entertain. When the separate statutory mechanism is provided for the consideration of a particular dispute and jurisdiction of H Civil Court is barred, and if it is brought before the Civil Court whose

jurisdiction is barred, it cannot entertain such a suit and receive it for consideration. It can be said that the Court has no jurisdiction to entertain such a suit. When the Court cannot think over to allow itself to consider, it can be said that it has no jurisdiction to entertain. It is like a case is cognizable in a consumer forum; a Civil Court cannot entertain it.

29. The expression "jurisdiction to entertain" is also used in Section 14 of the Limitation Act. The provisions of Section 14 provide that in case a suit is filed in the wrong court and the Court from the defects of jurisdiction is unable to entertain it, the period to institute a suit can be extended.

30. The meaning of the word 'entertain' came up for consideration in *Kashiram v. Santokhbai*, AIR 1958 MP 91. The word 'entertain' means to admit for consideration. It does not mean giving relief. When the court receives it for consideration and disposal, according to law, it must be regarded as entertaining the suit or proceedings. The High Court of Madhya Pradesh has observed as under:

> "5. In our opinion, the contention advanced on behalf of the appellant must be given effect to. We have no doubt that S.14 of the Limitation Act has no application to the facts of this case, and the plaintiff is not entitled to the benefit of that section. Before that section can apply, the prior proceeding must have been founded upon the same cause of action as that on which the later suit is founded and the Court in which the prior proceeding was prosecuted must have been unable to entertain it for the reasons specified, namely, defect of jurisdiction or other cause of a like nature. Now the words 'which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it' which occur in S.14(1) of the Limitation Act are very significant.
>
> As pointed out by Mukherjee, J. (as he then was), in AIR 1945 Cal 381 (B), the word 'entertain' means to admit for consideration. It does not mean giving relief, and that when a suit or proceeding is not thrown out in limine but the Court receives it for consideration and disposal according to law, it must be regarded as entertaining the suit or proceeding, no matter whatever the ultimate decision may be; and that a suit is to be regarded as not entertained by the Court only if it is thrown out at its inception and the Court does not decide it on its merits."

A The learned Judge further observed that S.14 of the Limitation Act speaks of the inability of the Court to entertain a suit or proceeding on certain specific grounds, which are of a formal nature and that inability to entertain a suit means not inability to grant relief to the plaintiff but inability to give him a trial at all. In our opinion when a suit is dismissed not because the Court had no jurisdiction to entertain it, or B for any other cause of a like nature, but because it was misconceived or because the proceeding or the suit was not one recognised by law as legal in its initiation, then clearly S.14 of the Act is not attracted to such a suit.

C This view is amply supported by the cases cited by the learned counsel for the appellant and numerous other cases. Now, here, the plaintiff's prior suit was dismissed not because of any defect of jurisdiction or any other ground similar to it, but it was entertained and dismissed because it was wholly misconceived and the relief of rendition of accounts could not be granted against the son of a deceased agent. D The suit was dismissed because the proceedings according to the trial Court were not recognised by law as legal in their initiation. If then, S.14 of the Limitation Act has no applicability to this case, and the plaintiff's suit is governed by Art.89, then it is clearly barred by time and must be dismissed."

E The High Court of M.P. has relied upon the decision in *Nakul Chandra Ghose v. Shyamapada Ghose*, AIR 1945 Cal 381.

31. The expression 'entertain' means to admit a thing for consideration. When a suit or proceeding is not thrown out *in limine*, but the court receives it for consideration for disposal under the law, it F must be regarded as entertaining the suit or proceeding. It is inconsequential what is the final decision. The word 'entertain' has been held to mean to admit for consideration, as observed by this Court in *Lakshmiratan Engineering Works Ltd. v. Assistant Commissioner, Sales Tax, Kanpur*, AIR 1968 SC 488. The expression 'entertain' means to adjudicate upon or to proceed to consider on merits as G observed in *Hindusthan Commercial Bank Ltd. v. Punnu Sahu (Dead) through Legal Representatives*, 1971 (3) SCC 124.

32. The meaning of the word 'entertain' has been considered to mean 'adjudicate upon' or 'proceed to consider on merits.' It has been observed in *Hindusthan Commercial Bank Ltd. v. Punnu Sahu* H *(Dead) through Legal Representatives*, 1971 (3) SCC 124 as under:

"4. Before the High Court it was contended on behalf of the appellant, and that contention was repeated in this Court, that Clause (b) of the proviso did not govern the present proceedings as the application in question had been filed several months before that clause was added to the proviso. It is the contention of the appellant that the expression "entertain" found in the proviso refers to the initiation of the proceedings and not to the stage when the Court takes up the application for consideration. This; contention was rejected by the High Court relying on the decision of that court in *Kundan Lal v. Jagan Nath Sharma*, AIR 1982 All 547. The same view had been taken by the said High Court in *Dhoom Chand Jain v. Chamanlal Gupta*, AIR 1962 All 543 and *Haji Rahim Bux and Sons v. Firm Samiullah and Sons*, AIR 1963 All 320 and again in *Mahavir Singh v. Gauri Shankar*, AIR 1964 All 289. These decisions have interpreted the expression "entertain" as meaning 'adjudicate upon' or 'proceed to consider on merits.' This view of the High Court has been accepted as correct by this Court in *Lakshmiratan Engineering Works Ltd. v. Asst. Comm., Sales Tax, Kanpur*, AIR 1968 SC 488. We are bound by that decision, and as such, we are unable to accept the contention of the appellant that Clause (b) of the proviso did not apply to the present proceedings."

The word 'entertain' came up for consideration in *Hindusthan Commercial Bank Ltd.* (supra) in the context of Order XXI Rule 90 as amended by the Allahabad High Court. The expression entertain has been held to mean to adjudicate upon or proceed to consider on merits.

IN RE: DIFFERENCE BETWEEN EXISTENCE AND EXERCISE OF JURISDICTION

33. There is a difference between the existence of jurisdiction and the exercise of jurisdiction. In case jurisdiction is exercised with material irregularity or with illegality, it would also constitute jurisdictional error. However, if a court has jurisdiction to entertain a suit but in exercise of jurisdiction, a mistake has been committed, though it would be a jurisdictional error but not lack of it. It may be a jurisdictional error open for interference in appellate or revisional jurisdiction.

34. In *Dabur India Limited v. K. R. Industries*, 2008 10 SCC 595, it has been observed that the jurisdiction under Order II Rules 2

A and 3 of the Code of Civil Procedure can be exercised only when the court has otherwise jurisdiction in respect of the cause of action wherefor the action has been brought. The Court has observed:

> "19. The question which was posed by the learned Single Judge is as under:
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> B
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> > "The next question, however, which is more important is whether the plaintiff can combine the two causes of action, one under the Copyright Act and the second under the Act of 1958 in a situation where this Court has the jurisdiction insofar as cause of action under the Copyright Act is
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> > concerned but has no territorial jurisdiction to entertain the cause of action relating to Act of 1958."
>
> Noticing the provisions of Order 2 Rules 2 and 3 of the Code of Civil Procedure enabling the plaintiff to combine more than one causes of action, it was opined that the said provisions relate to
> D
> pecuniary jurisdiction. The said jurisdiction, however, can be exercised only in the event the court has otherwise jurisdiction in respect of the cause of action wherefor the action has been brought."

35. The question of maintainability was also examined with
E reference to jurisdiction in *The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke & Ors*., AIR 1975 SC 2238, it has been held that in a Civil Court, suit was not maintainable for a decree for permanent injunction as it had no jurisdiction to grant the relief or even a temporary relief. The Court held:

> F
> "27……. The better and more reasonable view, therefore, to take is that all workmen represented by the two plaintiffs sought an order of injunction in the civil court to prevent an injury which was proposed to be caused to them in relation to their right under the Act. Hence <u>a suit for a decree for permanent injunction was not maintainable in the civil court as it had no jurisdiction to grant the relief or even a temporary relief.</u>"
> G

(emphasis supplied)

36. In a case, jurisdictional facts, as well as adjudicatory facts, may arise. When jurisdictional facts to entertain are missing, the court/
H tribunal cannot act at all. In the case of adjudicatory facts, the court

can proceed with the trial of the case exercising jurisdiction, and the same implies that the court has the jurisdiction to deal with the matter, that is called the power to examine on merits. Adjudication is the power to proceed to consider on merits.

37. In *Bhai Jai Kishen Singh v. Peoples Bank of Northern India (in liquidation) through Bhagwati Shankar, Official Liquidator,* AIR 1944 Lah 136, it has been observed that jurisdiction issue is one like preliminary issue not where the proceedings were dismissed on merits. In *Hari Prasad Mulshankar Trivedi v. V.B. Raju and Ors.,* (1974) 3 SCC 415 in the context of word jurisdiction, this Court observed thus:

> "28. We think that neither the decision of this Court in *Baidyanath Panjiar* v. *Sita Ram Mahto,* (1969) 2 SCC 447 which took the view that violation of Section 23(3) of the 1950 Act in entering or deleting the names of persons in the electoral rolls after the last date for making nomination relates to lack of power, nor the decision in *Wopanso* v. *N.L. Oduya*, (1971) 2 SCC 550 and others which also suggests that where there was lack of power, the question can be gone into by the Court trying an election petition, can, by analogy, be extended to an entry in the electoral roll on the basis of a wrong adjudication of the question of ordinary residence. Though the dividing line between lack of jurisdiction or power and erroneous exercise of it has become thin with the decision of the House of Lords in *The Anisminic case*, (1967) 3 WLR 382 we do not think that the distinction between the two has been completely wiped out. We are aware of the difficulty in formulating an exhaustive rule to tell when there is lack of power and when there is an erroneous exercise of it. The difficulty has arisen because the word "jurisdiction" is an expression which is used in a variety of senses and takes its colour from its context, (see per Diplock, J., at p. 394 in the *Anisminic case*). Whereas the "pure" theory of jurisdiction would reduce jurisdictional control to a vanishing point, the adoption of a narrower meaning might result in a more useful legal concept even though the formal structure of law may lose something of its logical symmetry. "At bottom, the problem of defining the concept of jurisdiction for purpose of judicial review has been one of public policy rather than one of logic." And viewed from

A the aspect of public policy as reflected in the provisions of the 1950 and 1951 Acts, we do not think that a wrong decision on a question of ordinary residence for the purpose of entering a person's name in the electoral roll should be treated as a jurisdictional error which can be judicially reviewed either in a civil court or before an election tribunal."

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(emphasis supplied)

It is observed that expression "jurisdiction" is used in a variety of senses and takes its colour from its context, in which it is used as observed in *Anisminic Ltd. v. Foreign Compensation Commission*, C [1968] 2 Q.B. 862.

38. In *Union of India v. Tarachand Gupta and Bros.*, 1971 (1) SCC 486, in the context of jurisdiction of Civil Court, it has been observed that it has both a narrow and broader meaning. In the sense of former, it means the authority to embark upon an enquiry, and latter, D the decision is in non-compliance with provisions of Act. It is observed:

"22. The principle thus is that exclusion of the jurisdiction of the civil courts is not to be readily inferred. Such exclusion, however, is inferred where the statute gives finality to the order of the tribunal on which it confers jurisdiction and provides for adequate E remedy to do what the courts would normally do in such a proceeding before it. Even where a statute gives finality, such a provision does not exclude cases where the provisions of the particular statute have not been complied with, or the tribunal has not acted in conformity with the fundamental principles of judicial procedure. The word "jurisdiction" has both a narrow and F a wider meaning. In the sense of the former, it means the authority to embark upon an enquiry; in the sense of the latter, it is used in several aspects, one of such aspects being that the decision of the tribunal is in non-compliance with the provisions of the Act. Accordingly, a determination by a tribunal of a G question other than the one which the statute directs it to decide would be a decision not under the provisions of the Act, and therefore, in excess of its jurisdiction."

(emphasis supplied)

39. Again, in *Official Trustee, West Bengal v. Sachindra Nath* H *Chatterjee,* AIR 1969 SC 823, it has been observed that before a court

can be held to have the jurisdiction to decide a particular matter, it must not only have the jurisdiction to try the suit brought but must also have the authority to pass the order sought from it. It should have the power to hear and decide the issue. The Court observed:

> "12. It is plain that if the learned judge had no jurisdiction to pass the order in question then the order is null and void. It is equally plain that if he had jurisdiction to pronounce on the plea put forward before him the fact that he made an incorrect order or even an illegal order cannot affect its validity. Therefore all that we have to see is whether Ramfry, J. had jurisdiction to entertain the application made by the settlor.
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> 13. What is meant by jurisdiction? This question is answered by Mukherjee, Acting C.J., speaking for the full bench of the Calcutta High Court in *Hirday Nath Roy* v. *Ramachandra Barna Sarma*. ILR 48 Cal 138 = AIR 1921 Cal 84 (FB). At page 146 of the report ILR (Cal) = (at p.36 of AIR) the learned judge explained what exactly is meant by jurisdiction. We can do no better than to quote his words:
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> "In the order of Reference to a Full Bench in the case of *Sukhlal* v. *Tara Chand*, (1905) ILR 33 Cal 68 (FB), it was stated that jurisdiction may be defined to be the power of a Court to 'hear and determine a cause, to adjudicate and exercise any judicial power in relation to it:' in other words, by jurisdiction is meant 'the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.' An examination of the cases in the books discloses numerous attempts to define the term 'jurisdiction', which has been stated to be 'the power to hear and determine issues of law and fact', "the authority by which the judicial officers take cognizance of and 'decide causes';" 'the authority to hear and decide a legal controversy', "the power to hear and determine the subject-matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them"; "the power to hear, determine and pronounce judgment on the issues before the Court"; "the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgments

A into effect"; "the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution"."

(emphasis supplied)

40. In *National Thermal Power Corpn. Ltd. v. Siemens Atkeingesellschaft,* (2007) 4 SCC 451, the question came up for consideration before a Division Bench of the Court concerning what is a jurisdictional question and whether declining to go into the merits of the claim would amount to a refusal to exercise jurisdiction. The Court held that declining to go into the merits of a claim in a particular case may amount to a refusal to exercise jurisdiction. What is jurisdictional question and jurisdiction was also considered by this Court. The question of limitation involving the question of jurisdiction of the Court or Tribunal came up for consideration, as a preliminary objection was raised as to maintainability of the appeal. The relevant portion of discussion is extracted hereunder:

"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* AIR 1996 SC 153, 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."

In a particular sense, therefore, any declining to go into the merits of a claim could be said to be a case of refusal to exercise jurisdiction.

18. The expression "jurisdiction" is a word of many hues. Its colour is to be discerned from the setting in which it is used. …."

It is apparent that when a claim is dismissed as barred by limitation, no doubt the refusal is within the realm of exercise of jurisdiction by the Court or Tribunal. It cannot be said that the Court has refused to exercise the jurisdiction to go into the merits by a wrong decision dismissing the case on the ground of limitation. In that context, *Pandurang Dhondi Chougule* (supra) has been relied upon which has dealt with the question of jurisdiction under Section 115 of CPC. This Court has also observed it in *National Thermal Power Corpn. Ltd.* (supra) that in the question of jurisdiction, the expression jurisdiction is a word of many hues and having a different meaning in which it is used. There is no dispute as to the abovementioned proposition laid down by this Court. The question in the aforesaid decision was not relating to jurisdiction to entertain the matter and to pass decree immune from collateral challenge. Thus, the decision lends no support to the cause of the respondents.

41. In *M.L. Sethi v. R.P. Kapur* (supra), the Court observed as under:

"12. …..The jurisdiction of the High Court under Section 115 of the CPC is a limited one. As long ago as 1884, in *Rajah Amir Hassan Khan* v. *Sheo Baksh Singh*, (1884) LR 11 IA 237, the Privy Council made the following observation on Section 622 of the former Code of Civil Procedure, which was replaced by Section 115 of the Code of 1908:

> "The question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."

In *Balakrishna Udayar* v. *Vasudeva Aiyar*, (1917) LR 44 IA 261, 267 the Board observed:

> "It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against

A conclusions of law or fact in which the question of jurisdiction is not involved."

In *N.S. Venkatagiri Ayyangar* v. *Hindu Religious Endowments Board, Madras,* (1948-49) LR 76 IA 73, the Judicial Committee said that Section 115 empowers the High Court to satisfy itself
B on three matters, (*a*) that the order of the subordinate court is within its jurisdiction; (*b*) that the case is one in which the court ought to exercise jurisdiction; and (*c*) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some
C error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. And if the High Court is satisfied on those three matters, it has no power to interfere because it differs from the conclusions of the subordinate court on questions of fact or law. ……

D The word "jurisdiction" is a verbal coat of many colours. Jurisdiction originally seems to have had the meaning which Lord Reid ascribed to it in *Anisminic Ltd.* v. *Foreign Compensation Commission*, (1969) 2 AC 147, namely, the entitlement "to enter upon the enquiry in question." If there was an entitlement to enter upon an enquiry, into the question, then any subsequent error
E could only be regarded as an error within the jurisdiction. The best known formulation of this theory is that made by Lord Darman in *R v. Bolton*, (1841) 1 Q.B. 66. He said that the question of jurisdiction is determinable at the commencement, not at the conclusion of the enquiry. In *Anisminic Ltd. case* (supra) Lord Reid said:

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> "But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it
G had no power to make. It may have failed in course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not
H remitted to it. It may have refused to take into account

> something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive."

In the same case, Lord Pearce said:

> "Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an enquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or, in the intervening stage while engaged on a proper enquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which the Parliament did direct. Any of these things would cause its purported decision to be a nullity."

The dicta of the majority of the House of Lords in the above case would show the extent to which 'lack' and 'excess' of jurisdiction have been assimilated or, in other words, the extent to which we have moved away from the traditional concept of "jurisdiction." The effect of the dicta, in that case is to reduce the difference between jurisdictional error and error of law within jurisdiction almost to vanishing point. The practical effect of the decision is that any error of law can be reckoned as jurisdictional. This comes perilously close to saying that there is jurisdiction if the decision is right in law but none if it is wrong. Almost any misconstruction of a statute can be represented as "basing their decision on a matter with which they have no right to deal," "imposing an unwarranted condition" or "addressing themselves to a wrong question." The majority opinion in the case leaves a Court or Tribunal with virtually no margin of legal error. Whether there is excess of jurisdiction or merely error within jurisdiction can be determined only by construing the empowering statute, which will give little guidance. It is really a question of how much latitude the court is prepared to allow. In the end, it can only be a value judgment (see H.N.R. Wade, "Constitutional and

A Administrative Aspects of the Anisminic case", *Law Quarterly Review*, Vol. 85,1969, p. 198). Why is it that a wrong decision on a question of limitation or res judicata was treated as a jurisdictional error and liable to be interfered with in revision? It is a bit difficult to understand how an erroneous decision on a
B question of limitation or res judicata would oust the jurisdiction of the court in the primitive sense of the term and render the decision or a decree embodying the decision a nullity liable to collateral attack. The reason can only be that the error of law was considered as vital by the court. And there is no yardstick to determine the magnitude of the error other than the opinion
C of the Court."

(emphasis supplied)

It has been laid down that erroneous decision on the question of *res judicata* or limitation would not oust the jurisdiction of the Court nor render the decision a nullity liable to collateral attack. The test of
D having no jurisdiction by the Court is that its judgment is amenable to attack in collateral proceedings.

42. In *Budhia Swain & others v. Gopinath Deb and others,* (1999) 4 SCC 396 = AIR 1999 SC 2089, the Court examined the issue
E whether decree passed by the civil court in a suit which was barred by limitation can be treated to be a nullity or not. It was observed that since the civil court had the jurisdiction to decide the suit although filed beyond limitation, the same was not a nullity and observed thus:

"14. A suit or proceeding entertained and decided in spite of being
F barred by limitation is not without jurisdiction; at worst it can be a case of illegality. …."

Thus, it is apparent that in a case barred by limitation, Court has jurisdiction to decide the issue. In case it has no jurisdiction, it cannot decide such an issue on merits at all.

G **IN RE: JURISDICTION TO ENTERTAIN UNDER SECTION 9A, CPC**

43. The word "jurisdiction" in section 9A is qualified with expression to 'entertain' the suit. Thus, it is apparent that the scope of Section 9A has been narrowed down by the legislature as compared
H to the provisions contained in Order XIV Rule 2(2) by not including

the provisions as to "a bar created by any other law for the time being in force." A

44. Since the expression used in section 9A as incorporated in Maharashtra, is "jurisdiction to entertain" that is in a narrower sense and its purport cannot be taken to be comprehensive as laid down in *Foreshore Cooperative Housing Society Limited* (supra). B

45. When we consider what colour expression "jurisdiction" has in Section 9A, it is clearly in the context of power to entertain, jurisdiction takes colour from accompanying word 'entertain'; *i.e.* the Court should have jurisdiction to receive a case for consideration or to try it. In case there is no jurisdiction, court has no competence to give C the relief, but if it has, it cannot give such relief for the reason that claim is time-barred by limitation or is barred by the principle of *res judicata* or by bar created under any other law for the time being in force. When a case is barred by *res judicata* or limitation, it is not that the Court has no power to entertain it, but it is not possible to grant D the relief. Due to expiry of limitation to file a suit, extinguishment of right to property is provided under Section 27 of the Limitation Act. When Court dismisses a suit on the ground of limitation, right to property is lost, to hold so the court must have jurisdiction to entertain it. The Court is enjoined with a duty under Section 3 of the Limitation Act to take into consideration the bar of limitation by itself. The expression E "bar to file a suit under any other law for the time being in force" includes the one created by the Limitation Act. It cannot be said to be included in the expression "jurisdiction to entertain" suit used in Section 9A. The Court has to receive a case for consideration and entertain it, to look into the facts constituting limitation or bar created by any other law to give relief, it has to decide the question on merits; then it has F the power to dismiss the same on the ground of limitation or such other bar created by any other law. Thus, the meaning to be given to jurisdiction to entertain in Section 9A is a narrow one as to maintainability, the competence of the court to receive the suit for adjudication is only covered under the provisions. The word entertain G cannot be said to be the inability to grant relief on merits, but same relates to receiving a suit to initiate the very process for granting relief.

46. The provision has been carved out under Section 9A, CPC to decide, question of jurisdiction to entertain, at the stage of deciding the interim application for injunction and the very purpose of enactment H

A of the same was that the suits were being instituted without serving a notice under Section 80, which at the time of initial incorporation of provisions could not have been instituted without serving a notice of two months. There was a bar to institute a suit. It became practice that after obtaining injunction, suit was allowed to be withdrawn with liberty to file fresh suit after serving the notice. To take care of misuse
B of the provisions, Section 9A was introduced in the year 1970 and had been re-introduced again in 1977 to consider question of jurisdiction to entertain at the stage of granting injunction or setting aside. The provision has been inserted having the narrow meaning as at the stage of granting *ex parte* injunction; the question can be considered. The
C written statement, set-off and counterclaim are not filed, discovery, inspection, admission, production and summoning of the documents stage has not reached and after the stages described above, framing of issues takes place under Order XIV. As per Order XIV Rule 1, issues arise when a material proposition of fact or law is affirmed by the one
D party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and if the question of law arises which is dependent upon the outcome of admitted facts, it is open to the Court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order
E XIV Rule 2. In Order XIV Rule 2(1), the Court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order XIV Rule 2(2) makes a departure and Court may decide the question of law as to jurisdiction of the Court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act.
F

47. In a case question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order XIV Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under
G Order XIV Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the
H facts are disputed and the question of law is dependent upon the

outcome of the investigation of facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976. A

48. The suit/application which is barred by limitation is not a ground of jurisdiction of the court to entertain a suit. If a plea of adverse possession has been taken under Article 65 of the Limitation Act, in case it is successfully proved on facts; the suit has to be dismissed. However, it is not the lack of the jurisdiction of the Court that suit has to be dismissed on the ground of limitation, but proof of adverse possession for 12 years then the suit would be barred by limitation such question as to limitation cannot be decided as a preliminary issue. B C

49. What is intended by Section 9A of the Code of Civil Procedure, 1908 (CPC) is the defect of jurisdiction. It may be *inter alia* territorial or concerning the subject matter. The defect of jurisdiction may be due to provisions of the law. In *Raghunath Das v. Gokal Chand*, AIR 1958 SC 827, the execution of award of the decree was dismissed by the Court on the ground that decree was a nullity. The Court had no jurisdiction to pass a decree of the partition of agricultural land. It held that defect of the jurisdiction in the court that passed decree became attached to decree itself as dismissal of the suit was on account of the defect of jurisdiction. Thus, in our considered opinion, it is only the maintainability of the suit before the court which is covered within the purview of Section 9-A CPC as amended in Maharashtra. D E

50. Reliance has been placed on the provisions of Section 3 of the Limitation Act to submit that the Court cannot proceed with the suit which is barred by limitation although limitation has not been set up as a defence. No doubt about it that Section 3 of the Act provides that subject to the provisions contained in Sections 4 to 24 of the Limitation Act, every suit instituted, appeal preferred, and the application made after the prescribed period shall be dismissed, it nowhere provides that Court has no jurisdiction to deal with the matter. Until and unless Court has the jurisdiction, it cannot proceed to dismiss it on the ground of limitation under Section 3. F G

51. Within the ken of provisions of section 9A, CPC jurisdiction of the Court to entertain the suit has to be decided without recording of evidence. Recording of evidence is not contemplated even at the stage of framing issue under Order XIV Rule 2 much less it can be H

A allowed at the stage of grant of injunction, it would be the grossest misuse of the provisions of the law to permit the parties to adduce the evidence, to prove facts with respect to a preliminary issue of jurisdiction to entertain a suit. In case it is purely a question of law, it can be decided within the purview of section 9A of CPC as applicable in Maharashtra. The scope of Section 9A is not broader than Order XIV Rule 2 (2) of
B the CPC. The scope is a somewhat limited one. Two full-fledged trials by leading evidence are not contemplated in CPC, one of the preliminary issue and another on other issues. Until and unless the question is pure of the law, it cannot be decided as a preliminary issue. In our opinion, a mixed question of law and fact cannot be decided as a preliminary
C issue, either under Section 9A or under Order XIV Rule 2 CPC. Before or after its amendment of CPC concerning both provisions, the position is the same.

IN RE: ORDER XIV RULE 2

D 52. The expressions used in the Order XIV Rule 2 as incorporated in the CPC by way of Amendment Act, 1976, firstly deals with the jurisdiction of the Court or secondly a bar to the suit created by any law for the time being in force. The expression used in the Order XIV Rule 2(2)(a) deals with the jurisdiction of the Court.

E 53. In *Sajanbir Singh Anand and others v. Raminder Kaur Anand and others,* 2018 (3) Mh.L.J. 892; the question came up for consideration as to the period of limitation for filing administration suit. It has been observed the relief claimed by the plaintiff has to be decided on facts of the case, and aspect of limitation would have to be considered in the context. In an administration suit, the Limitation Act,
F 1963 does not prescribe specific article for determining the period of limitation. There is no specific article for determination of the period of limitation. The pleadings and the prayers of a suit for administration would have to be analysed, and after that, the relevant article is to be made applicable.

G 54. The submission was raised that Section 9A is repugnant to Order XIV Rule 2. We have interpreted Section 9A and we find that the scope of Section 9A is different as compared to the provisions of Order XIV Rule 2 and the scope of Section 9A is limited not as comprehensive as that of Order XIV Rule 2. However, the concept of Order XIV Rule 2 with respect to what can be treated as preliminary
H issue will be applicable under Section 9A only in case question of

"jurisdiction to entertain" arises, i.e., if it can be decided purely as question of law, at the stage contemplated under Section 9A, not in case if it is a mixed question of law and fact, no evidence can be recorded to decide the question under Section 9A, CPC.

55. In *Abdul Rahman v. Prasony Bai and another,* (2003) 1 SCC 488, the provisions of Order XIV Rule 2 came up for consideration. Where facts are admitted, suit can be disposed of on preliminary issue and no particular procedure need be followed by the Court. It has been held that in particular, if facts are admitted, the issue of *res judicata* and constructive *res judicata* and also maintainability of the suit should be decided as a preliminary issue. Following observation is relevant:

> "21. For the purpose of disposal of the suit on the admitted facts, particularly when the suit can be disposed of on preliminary issues, no particular procedure was required to be followed by the High Court. In terms of Order 14 Rule 1 of the Code of Civil Procedure, a civil court can dispose of a suit on preliminary issues. It is neither in doubt nor in dispute that the issues of res judicata and/or constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary issues. Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues."
>
> (emphasis supplied)

In case facts are admitted, no doubt about it that under Order XIV Rule 2, a suit can be decided even as to the question of *res judicata,* constructive *res judicata*, and maintainability. However, under Section 9A, the only jurisdiction to entertain has to be decided, where maintainability of the suit is decided concerning the jurisdiction of the Court as a pure question of law at a preliminary stage. Thus, the decision in *Abdul Rehman v. Prasony Bai* (supra) rendered at the stage of Order XIV Rule 2, has no application to the controversy at hand.

56. In *Gunwantbhai Mulchand Shah v. Anton Elis Farel and others,* (2006) 3 SCC 634, the suit was filed for specific performance. The Court held that the question of limitation in the facts could not have been decided as a preliminary issue. The suit could not have been dismissed as barred by limitation for the relief of specific performance. Though the Court held that there was jurisdiction, the matter was

A remitted to the trial court to decide all the issues, including limitation after parties adduced evidence. In *Indian Bank v. Maharashtra State Cooperative Marketing Federation Ltd.,* (1998) 5 SCC 69, it is observed that there is jurisdiction to entertain when the question is of applicability of Section 10. This Court in *Sneh Lata Goel v. Pushplata and others,* (2019) 3 SCC 594 observed that given the provisions of
B Section 21 of CPC, no objection as to the place of suing should be allowed by the appellate court unless there is a consequent failure of justice. An objection raised in adjudicating court was as to territorial jurisdiction, which did not travel to the root or to the inherent lack of jurisdiction of a civil court to entertain the suit. The competence to try
C a case has been considered in *Hiralal Patni v. Kali Nath,* AIR 1962 SC 199 referred to in *Sneh Lata Goel* (supra), in which this Court has observed thus:

> "13. Sub-section (1) of Section 21 provides that before raising an objection to territorial jurisdiction before an appellate or
D revisional court, two conditions precedent must be fulfilled:
>
> (*i*) The objection must be taken in the court of first instance at the earliest possible opportunity; and
>
> (*ii*) There has been a consequent failure of justice.
>
> E This provision which the legislature has designedly adopted would make it abundantly clear that an objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. Hence, it has to be raised before the court of first instance at
> F the earliest opportunity, and in all cases where issues are settled, on or before such settlement. Moreover, it is only where there is a consequent failure of justice that an objection as to the place of suing can be entertained. Both these conditions have to be satisfied.
>
> G 14. The learned counsel appearing on behalf of the respondents has submitted that the objection as to the lack of territorial jurisdiction was raised in the written statement before the trial court. But evidently, the suit was decreed ex parte after the respondents failed to participate in the proceedings. The provisions of Section 21(1) contain a clear legislative mandate that an
> H objection of this nature has to be raised at the earliest possible

opportunity before issues are settled. Moreover, no such objection can be allowed to be raised even by an appellate or revisional jurisdiction, unless both sets of conditions are fulfilled."

It is in the context of the inherent lack of jurisdiction to entertain the suit, the expression has been used in Section 9A.

IN RE: MIXED QUESTION OF LAW AND FACT AND ORDER VII RULE 11 CPC

57. A Three-Judge Bench of this Court in *Major S.S. Khanna v. Brig. F.J. Dhillon*, AIR 1964 SC 497, has held that jurisdiction to try issues of law apart from the issues of fact may be exercised by the Court if the whole suit may be disposed on the issue of law alone, but the Code confers no jurisdiction upon the Court to try a suit on the mixed issue of law and facts as preliminary issues.

58. In *Narne Rama Murthy v. Ravula Somasundaram & Ors.* (2005) 6 SCC 614, this Court has held that even if it is apparent from the plaint averment only, that suit is barred by limitation, it can be tried as a preliminary issue even in the absence of plea of limitation raised by the defendants. However, in cases where the question of limitation is a mixed question of fact and law and suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation, which have been pleaded have to be proved, on issues raised and decided on evidence. However, in our considered opinion question of limitation, in no case, can be said to be a question of jurisdiction of the Court in the context it has been used in Section 9A CPC.

59. In *Satti Paradesi Samadhi and Pillayar Temple v. M. Sankuntala (Dead) through Legal Representatives and others*, (2015) 5 SCC 674, it has been observed that issue of limitation requiring an inquiry into the facts, cannot be tried as a preliminary issue. The mixed questions of law and facts cannot be decided as a preliminary issue.

60. In *Ramdayal Umraomal v. Pannalal Jagannathji,* 1979 M.P.L.J 736, a Full Bench of Madhya Pradesh High Court has observed that under Order XIV Rule 2, mixed questions of law and fact requiring recording of evidence cannot be tried as a preliminary issue. The issue of jurisdiction can be tried as a preliminary issue when it is an issue of law requiring no evidence to be adduced. Various High Courts have taken a similar view in several decisions in *Sunni Central Waqf Board*

A *and others v. Gopal Singh Vishrad and others,* AIR 1991 All 89, *Venkatesh r. Desai v. Smt. Pushpa Hosmani & Ors.,* ILR 2018 Kar 5095, *Prithvi Raj v. Munnalal*, 1957 RLW 323, *Bhag Singh v. Nek Singh* 1994 SCC OnLine P&H 594, *State Trading Corporation of India Ltd. v. Government of the Peoples Republic of Bangladesh,* ILR (1997) Del 229, *Naresh Chandra Das v. Gopal Chandra Das,* AIR 1991 Cal 237, *Taj Kerala Hotels & Resorts Ltd. v. Easytec India Pvt. Ltd.,* 2013 SCC OnLine Ker 20240, *Madhabananda Govindasamy v. Manickam & Ors*., 2016-1-L.W. 49, *Angsley Investment Ltd. v. Turus Shipping Service & Ors.,* AIR 2007 Guj 23; *Chandrama Singh v. (D) through LRs v. Ram Kishore Agrawal & Ors.,* 2016 SCC OnLine Chh 1740, *Naresh Chandra Gautam v. Chhote Khan,* 2003 SCC OnLine Utt 12, *Ramagya Tiwari v. Shib Kumar Sah & Ors*., 2018 SCC OnLine Jah 578, *Lalchand Sha & Ors. v. Kalabati Devi & Ors.,* (2008) 2 Gau LR 561 and *J Mnthamma & Anr. v. Bayya Iiglamma & Ors.*

D 61. In *Vaish Aggarwal Panchayat v. Inder Kumar and others*, AIR 2015 SC 3357, the question came up for consideration of rejection of the plaint under Order VII Rule 11 on the ground that same being barred by limitation. Mere ex facie reading of the plaint, it could not be held that the suit was barred by time. The question of limitation becomes a mixed question of facts and law and cannot be decided as a E preliminary issue as the framing of issues and taking evidence was necessary.

62. In our opinion, it cannot be laid down as proposition of law under Order VII Rule 11(d) that plaint cannot be rejected as barred by limitation. It can be said that it is permissible to do so mainly in a case F where the plaint averment itself indicate the cause of action to be barred by limitation and no further evidence is required to adjudicate the issue.

63. In *Hareendran and others v. Sukumaran and others,* (2018) 14 SCC 187, this Court has laid down that question of limitation in the case being mixed question of law and facts, could not have been G decided as preliminary issue. The provision under which a plaint can be rejected is provided in Order VII Rule 11(d). The language used in Order VII Rule 11 is where averments made in plaint does not disclose a cause of action; relief claimed is undervalued, and the plaint is not corrected in spite of the direction of the Court; plaint is insufficiently stamped, and in spite of Court's order the plaintiff has failed to supply H

the requisite stamp duty; where the suit appears from the statement in the plaint to be barred by any law; where it is not filed in duplicate; and where plaintiff fails to comply with the provisions of rule 9. What is of significance under Order VII Rule 11 is that from the averments of plaint itself the suit is barred by any law and it would include limitation also including bar created by any other law for the time being in force. For the rejection of plaint, averments made by the defendant in the written statement or otherwise cannot be seen, only the averments of the plaint are material and can be taken into consideration and no other evidence.

64. The question concerning Order VII Rule 11 came up for consideration in *Ramesh B. Desai and Ors. v. Bipin Vadilal Mehta and Ors.,* (2006) 5 SCC 638, as to the determination of the question of limitation as a preliminary issue. The Court observed that the starting point of limitation has to be ascertained on facts in every case. A plea of limitation cannot be decided as an abstract principle of law divorced from the facts for rejection of the plaint under Order VII Rule 11(d). In the case of a disputed question of fact, the question of limitation cannot be decided as a preliminary issue without a decision on facts based on the evidence that has to be adduced by the parties. The Court has no jurisdiction under Order XIV Rule 2 to decide a mixed question of law and facts as a preliminary issue. Following observations have been made:

> "13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that 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 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. The provisions of this Rule came up for consideration before this Court in *Major S.S. Khanna* v. *Brig. F.J. Dillon,* AIR 1964 SC 497 and it was held as under (SCR p. 421)
>
> "Under Order 14 Rule 2, Code of Civil Procedure 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 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.

A The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit."

Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the above-quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue."

D 65. (a) Reliance has been placed on various decisions, under Order VII Rule 11(d) in which expression has been used that plaint has to be rejected if any law bars it as per the averments made in the plaint. In *Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by Lrs.,* AIR 2019 SC 1430, it was held as under:

E "7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 of the CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the Courts below have materially erred in not rejecting the plaint in exercise of powers F under Order 7 Rule 11 of the CPC. It is required to be noted that it is not in dispute that the original Plaintiff himself executed the gift deed along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the Plaintiff. It is the case of the Plaintiff that the gift deed was a showy deed of gift, and therefore the same is not binding G on him. However, it is required to be noted that for approximately 22 years, neither the Plaintiff nor his brother (who died on 15.12.2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed - brother of the Plaintiff during his lifetime never claimed that the H gift deed was a showy deed of gift. It was the Appellant herein-

original Defendant who filed the suit in the year 2001 for partition, and the said suit was filed against his brothers to which the Plaintiff was joined as Defendant No. 10. It appears that the summon of the suit filed by the Defendant being T.S. (Partition) Suit No. 203 of 2001 was served upon the Defendant No. 10-Plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e., the period from 1981 till 2001/2003, the suit property was mortgaged by the Appellant herein-original Defendant and the mortgage deed was executed by the Defendant. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the Plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in the case of *T. Arivandandam* (AIR 1977 SC 2421) (supra) and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 of the CPC."

65.(b) In *N.V. Srinivasa Murthy & others v. Mariyamma (Dead) by proposed LRs. & Ors.,* (2005) 5 SCC 548, this Court observed as under:

"16. The High Court does not seem to be right in rejecting the plaint on the ground that it does not disclose any "cause of action." In our view, the trial court was right in coming to the conclusion that accepting all averments in the plaint, the suit seems to be barred by limitation. On critical examination of the plaint as discussed by us above, the suit seems to be clearly barred on the facts stated in the plaint itself. The suit as framed is prima facie barred by the law of limitation, provisions of the Specific Relief Act as also under Order 2 Rule 2 of the Code of Civil Procedure."

65. (c) This Court in *Suman Devi v. Manisha Devi & others,* (2018) 9 SCC 808, observed as under:

"10. The Haryana Panchayati Raj Act, 1994 is a complete code for the presentation of election petitions. The statute has mandated that an election petition must be filed within a period

A of 30 days of the date of the declaration of results. This period cannot be extended. The provision of Section 14 of the Limitation Act, 1963 would clearly stand excluded. The legislature having made a specific provision, any election petition which fails to comply with the statute is liable to be dismissed. The High Court has failed to notice both the binding judgments of this Court and its own precedents on the subject, to which we have referred. The first respondent filed an election petition in the first instance to which there was an objection to maintainability under Order 7 Rule 11 CPC. Confronted with the objection under Order 7 Rule 11, the first respondent obviated a decision thereon by withdrawing the election petition. The grant of liberty to file a fresh election petition cannot obviate the bar of limitation. The fresh election petition filed by the first respondent was beyond the statutory period of 30 days and was hence liable to be rejected."

The decisions described above under Order VII Rule 11, CPC do not advance the submissions raised on behalf of respondents. In case averments in the plaint indicate that suit is barred, it is liable to be rejected before the stage of Section 9A of CPC comes. Thus, the stage at which Order VII Rule 11(d) has to be applied, is at the threshold and the scope of Section 9A is somewhat limited and different. Though the scope of rejection of plaint under Order VII Rule 11(d) is broad enough which includes rejection of the plaint in case any law bars it, however, only the averments in the plaint have to be seen, nevertheless Section 9A is limited in its operation as to the jurisdiction of the Court to entertain a suit.

IN RE: DECISION IN *FORESHORE COOPERATIVE HOUSING SOCIETY LIMITED*

66. Now we consider decision relied on *Foreshore Cooperative Housing Society Limited* (supra) in which decision of the Court in *Pandurang Dhondi Chougule* (supra) and other decisions have been relied on.

67. In *Pandurang Dhondi Chougule* (supra), a decision of Constitution Bench of this Court, the question of "jurisdiction" came up for consideration in the context of provisions contained in Section 115 of CPC to the extent of revisional powers of the High Court as to what would constitute an error of question of law. The Court has observed thus:

"10. Judicial decisions have examined the provisions of S.115 of the Code on several occasions. While exercising its jurisdiction under S.115, it is not competent to the High Court to correct errors of fact however gross they maybe, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As Cls. (*a*), (*b*) and (*e*) of S.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 S.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 S.115."

The High Court while exercising powers interfered in the question of adjustment of debt on the ground that the district court has made wrong construction of particular decree. The question arose whether the High Court could have corrected such an error in the exercise of the revisional jurisdiction under Section 115 of CPC. This Court laid down that the High Court has exceeded its jurisdiction as the High Court is not competent to correct the error of fact, however, gross they may be or even errors of law, unless the said errors have relation to the jurisdiction. In case the Court has exercised jurisdiction vested in it illegally, or with material irregularity, the High Court can interfere. Given the context of section 115, CPC, the Constitution Bench has observed that plea of limitation is a plea of law, which concerns the jurisdiction of the court which tries the proceedings. The Constitution Bench has not laid down that question of limitation, and *res judicata* have to be tried as a preliminary issue. It cannot be disputed as observed by this Court that the question of *res judicata* and limitation pertains to the

A question of jurisdiction of the Court to pass a decree in the proceeding. In case proceeding is barred by limitation, the Court has no jurisdiction to pass a decree. The court had inherent jurisdiction and in the course of proceeding how the jurisdiction is to be exercised and what amounts to a case of a wrong decision in the course of the exercise of jurisdiction is another colour in which jurisdictional error has been gauged in *Pandurang Dhondi Chougule* (supra). It was not a case of want of the existence of jurisdiction to decide the issue. The question of limitation and *res judicata,* are to be decided within the realm of exercise of jurisdiction following the law. The finding on the pleas mentioned above may oust the jurisdiction of the Court to pass a decree as other laws bar it. Thus, these pleas can be termed as concerning with the question of jurisdiction, in the exercise thereof they have to be decided. The decision renders no help to espousing the cause of the respondents. In *Foreshore Cooperative Housing Society Limited* (supra) the court has wrongly applied a different colour of jurisdiction used under section 115 CPC which was dealt with in *Pandurang Dhondi Chougule case* (supra). It is a mismatch and does not merge with the context of provisions of section 9A CPC.

68. In *Ittyavira Mathai v. Varkey Varkey and Anr.,* AIR 1964 SC 907, the question of jurisdiction to try a suit has been distinguished from the error of jurisdiction committed while exercising the same, came up for consideration before Four-Judge Bench of this Court. The Court has observed that decree passed in the suit barred by time cannot be said to be a nullity as the Court passing the same has the jurisdiction over the party and the subject-matter. A wrong decision is not the one for which the Court had no jurisdiction. It had jurisdiction over the subject matter, over the parties and therefore an error of decision would not make a decree beyond jurisdiction. Section 3 of the Limitation Act also came up for consideration, which would be a simple error of law. In the said case jurisdictional issue has been wrongly decided as to limitation. The decision of the Privy Council in *Maqbul Ahmad and others v. Onkar Pratap Narain,* AIR 1935 PC 85, has also been referred to in *Ittyavira Mathai* (supra) thus:

> "8. The first point raised by Mr. Paikedy for the appellant is that the decree in OS No. 59 of 1093 obtained by Anantha Iyer and his brother in the suit on the hypothecation bond executed by Ittiyavira in favour of Ramalinga Iyer was a nullity because the

suit was barred by time. Even assuming that the suit was barred by time, it is difficult to appreciate the contention of the learned counsel that the decree can be treated as a nullity and ignored in subsequent litigation. If the suit was barred by time and yet, the court decreed it, the court would be committing illegality, and therefore the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. However, it is well settled that a court having jurisdiction over the subject-matter of the suit and the parties to it, 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. It had the jurisdiction over the subject matter, and it had the jurisdiction over the party and, therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. As has often been said, courts have jurisdiction to decide right or to decide wrong, and even though they decide wrong, the decrees rendered by them cannot be treated as nullities. Learned counsel, however, referred us to the decision of the Privy Council in *Maqbul Ahmad* v. *Onkar Pratap Narain Singh*, AIR 1935 PC 85 and contended that since the court is bound under the provisions of S.3 of the Limitation Act to ascertain for itself whether the suit before it was within time, it would act without jurisdiction if it fails to do so. All that the decision relied upon says is that S.3 of the Limitation Act is peremptory and that the court has to take notice of this provision and give effect to it even though the point of limitation is not referred to in the pleadings. The Privy Council has not said that where the court fails to perform its duty, it acts without jurisdiction. If it fails to do its duty, it merely makes an error of law, and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity."

69. The respondents have relied upon the decision in *Manick Chandra Nandy v. Debdas Nandy and others,* (1986) 1 SCC 512, in which again question of exercise of revisional jurisdiction of the High Court under Section 115 of CPC arose. This Court pointed out the difference between revisional and appellate jurisdiction. The trial court

held that the application under Rule 13 of Order IX, CPC not to be barred by limitation. This Court observed that the High Court is not competent in exercise of its revisional jurisdiction to come to a different conclusion by examining the facts. Article 123 of the Limitation Act came up for consideration in the case when the applicant knew of the passing of the decree. Knowledge of passing of decree is a question of fact and would be a collateral fact upon which the determination of the question of jurisdiction of the court would depend. It was again a case of exercise of jurisdiction by the Court, in that context, observations have been made about Section 115 which provides that in case jurisdiction has been exercised illegally or with material irregularity, the High Court can interfere under Section 115 of CPC, not otherwise. In *Manick Chandra Nandy* (supra), the following observations have been made:

> "5. We are constrained to observe that the approach adopted by the High Court in dealing with the two revisional applications was one not warranted by law. The High Court treated these two applications as if they were first appeals and not applications invoking its jurisdiction under Section 115 of the Code of Civil Procedure. The nature, quality, and extent of appellate jurisdiction being exercised in the first appeal and of revisional jurisdiction are very different. The limits of revisional jurisdiction are prescribed and its boundaries defined by Section 115 of the Code of Civil Procedure. Under that section revisional jurisdiction is to be exercised by the High Court in a case in which no appeal lies to it from the decision of a subordinate court if it appears to it that the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law or has acted in the exercise of its jurisdiction illegally or with material irregularity. The exercise of revisional jurisdiction is thus confined to questions of jurisdiction. While in a first appeal the court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to reexamine or reassess the evidence on record and substitute its findings on facts for those of the subordinate court. In the instant case, the respondents had raised a plea that the appellant's application under Rule 13 of Order IX was barred by limitation. Now, 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 determining the correctness of the decision reached by the subordinate court on such a plea, the High Court may at times have to go into a jurisdictional question of law or fact, that is, it may have to decide collateral questions upon the ascertainment of which the decision as to jurisdiction depends. For the purpose of ascertaining whether the subordinate court has decided such a collateral question rightly, the High Court cannot, however, function as a court of first appeal so far as the assessment of evidence is concerned and substitute its own findings for those arrived at by the subordinate court unless any such finding is not in any way borne out by the evidence on the record or is manifestly contrary to evidence or so palpably wrong that if allowed to stand, would result in grave injustice to a party."

The word jurisdiction has a different contour under Section 115, CPC. The decision has no relevance as to the interpretation of the expression 'jurisdiction to entertain', the context in which it has been used in Section 9A.

70. Reliance has also been placed on *ITW Signode India Ltd. v. Collector of Central Excise,* (2004) 3 SCC 48, in which it has been observed that question of limitation involves a question of jurisdiction. Finding of fact on the question of jurisdiction would be a jurisdictional fact. Such a question has to be determined having regard to the facts and law. Following observations have been made:

"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."

A The above decision is of no help as it dealt with the exercise of jurisdiction when the Court has it. The observation has been made not in the context of lack of jurisdiction to entertain a suit.

71. Reliance has further been placed on *Kamlesh Babu and others v. Lajpat Rai Sharma and others,* (2008) 12 SCC 577, in which B question arose for consideration as to the finding of the trial court which held that the suit was barred by limitation though the judgment was reversed by the First Appellate Court. The previous finding was not dealt with by the First Appellate Court or the High Court. This Court held that plea of limitation maybe a mixed question of law and facts. This Court considered the provisions of limitation and Order VII Rule C 11(d) and observed that in case of suit appears from the statement made in the plaint to be barred by law of limitation, the question of law as to jurisdiction of a Court goes to the very root of the court's jurisdiction to entertain and decide a matter as otherwise decision rendered without jurisdiction will be a nullity. The expression nullity used by Division D Bench in *Kamlesh Babu* (supra) cannot be said to be in the context of the limitation, but the question of jurisdiction when the Court has no power to try the suit. In our opinion, a wrong decision on the question of limitation will not render judgment a nullity. With great respect we observe that the expression used by this Court in para 23 that wrong decision on the question of limitation would render a judgment of the E Court having jurisdiction to decide the issue as a nullity is *ex facie* incorrect. It may be a case of illegal exercise of jurisdiction to decide the issue, but judgment would not be a nullity.

72. The decision in *Indian Farmers Fertilizer Cooperative Limited v. Bhadra Products,* (2018) 2 SCC 534, has been referred by F respondents in which the question came up for consideration as to the issue of the decision on limitation. This Court has observed that wrong decision on the question of limitation or *res judicata* would oust the jurisdiction of the Court. The scope of jurisdiction under Section 16 of the Arbitration and Conciliation Act, 1996 has been explained. In our opinion, the issue of *res judicata* and limitation can be decided if the G Court has jurisdiction to entertain a suit, not otherwise.

73. The question of jurisdiction came up for consideration in *Indian Farmers Fertilizer Cooperative Limited* (supra), in which this Court observed that same is power of the court to hear and determine a case and to adjudicate or exercise any judicial power and its contextual H interpretation has to be made. The Court observed:

"21. That "jurisdiction" is a coat of many colours, and that the said word displays a certain colour depending upon the context in which it is mentioned, is well-settled. In the classic sense, in *Official Trustee* v. *Sachindra Nath Chatterjee*, AIR 1969 SC 823, "jurisdiction" is stated to be: (SCR p. 99: AIR pp. 827-28, para 13)

"*13*. … 'In the order of reference to a Full Bench in *Sukh Lal Sheikh* v. *Tara Chand Ta*, ILR (1906) 33 Cal 68, it was stated that jurisdiction may be defined to be the power of a court to *hear and determine a cause, to adjudicate and exercise any judicial power in relation to it; in other words, by jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision*. An examination of the cases in the books discloses numerous attempts to define the term "jurisdiction", which has been stated to be "*the power to hear and determine issues of law and fact*", "the authority by which the judicial officers take cognizance of and decide causes"; "*the authority to hear and decide a legal controversy*", "the power to hear and determine the subject-matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them"; "the power to hear, determine and pronounce judgment on the issues before the court"; "the power or authority which is conferred upon a court by the legislature to hear and determine causes between parties and to carry the judgments into effect"; "the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution".' (Mukherjee, Acting C.J., speaking for the Full Bench of the Calcutta High Court in *Hirday Nath Roy* v. *Ram Chandra Barna Sarma*, 1920 SCC OnLine Cal 85 : ILR (1921) 48 Cal 138, SCC OnLine Cal)""

In *Indian Farmers Fertilizer Cooperative Limited* (supra), it is further observed that if the Court having jurisdiction, has decided the question wrongly, it cannot be said that Court had no jurisdiction to do so and erroneous decision on question of jurisdiction or *res judicata* would not oust the jurisdiction of the Court and render the decision a nullity liable to collateral attack.

74. The decisions of Bombay High Court have also been relied upon by the learned senior counsel appearing for the respondents. In

A *Smithkline Beecham Consumer Healthcare* (supra), the Court has observed that legislature has used the word in Section 9A in the broader sense and the Court is required to consider the bar to the maintainability of the suit under Section 9A of CPC. The High Court held that it has a broader meaning where a statute bars the suit. In our opinion, the decision cannot be said to be laying down the law correctly and as such
B same is overruled. Reliance has also been placed on *Sudesh v. Abdul Aziz*, 2001 (1) Mh.L.J. 324, in which the High Court has observed that the law has been laid down that any question of limitation based upon the issue of jurisdiction has to be decided as a preliminary issue. The view taken by the Court that since it is a mixed question of law and
C facts, could not be decided at the stage, was held to be erroneous under Section 9A. The decision in *Sudesh v. Abdul Aziz* (supra) cannot be said to be laying down the law correctly and is as a result of this overruled.

75. Reliance has been placed on the decision of *Shraddha Associates v. St. Patrick's Town Co-operative Housing Society Ltd.,*
D 2003 (2) Mh.L.J. 219, wherein a view has been taken that issue regarding limitation can be decided as a preliminary issue. Observations made in *Shraddha Associates* (supra) about the question of limitation for Section 9A cannot be said to be laying down the correct proposition of law. Similar view taken in *Foreshore Cooperative Housing Society*
E *Limited v. Praveen D. Desai,* (2009) 1 AIR Bom R 477, *Royal Palms (India) P. Ltd. v. Bharat Shah,* (2009) 2 Bom CR 622, *Mukund Ltd. v. MIAL,* 2011 (2) Mh.L.J. 936, *Jagshi Shah v. Shaan Builders,* (2012) 3 Bom CR 770, *Ferani Hotels P. Ltd. and another v. Nusli Neville Wadia and others,* 2012 SCC OnLine Bom 1994, *Naresh Lachnmandas Aswani v. Haridas Aswani and others,* 2013 SCC
F OnLine Bom 1368 and *Union of India and others v. N.K. Bhog and others,* 2015 SCC OnLine Bom 664, cannot be said to be laying down the law correctly in regard to scope of Section 9A CPC as applicable in Maharashtra.

IN RE: LITERAL INTERPRETATION

G

76. The learned counsel appearing for the respondents urged that the Court cannot twist the clear language of the enactment to avoid any real or imaginary hardship which such literal interpretation may cause. Reliance has also been placed on *Rohitash Kumar and others v. Om Prakash Sharma and others,* (2013) 11 SCC 451, in which
H following observations have been made:

"23. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the court has no choice but to enforce it in full rigour. It is a well-settled principle of interpretation that hardship or inconvenience caused cannot be used as a basis to alter the meaning of the language employed by the legislature if such meaning is clear upon a bare perusal of the statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice. [Vide *CIT (Ag)* v. *Keshab Chandra Mandal* AIR 1950 SC 265 and *D.D. Joshi* v. *Union of India* (1983) 2 SCC 235.]

24. In *Bengal Immunity Co. Ltd.* v. *State of Bihar* AIR 1955 SC 661 (SCC p. 685, para 43) it was observed by a Constitution Bench of this Court that, if there is any hardship, it is for the legislature to amend the law, and that the court cannot be called upon to discard the cardinal rule of interpretation for the purpose of mitigating such hardship. If the language of an Act is sufficiently clear, the court has to give effect to it, however inequitable or unjust the result may be. The words, "*dura lex sed lex*," which mean "the law is hard, but it is the law" may be used, to sum up, the situation. Therefore, even if a statutory provision causes hardship to some people, it is not for the court to amend the law. A legal enactment must be interpreted in its plain and literal sense, as that is the first principle of interpretation.

25. In *Mysore SEB* v. *Bangalore Woollen Cotton & Silk Mills Ltd.* AIR 1963 SC 1128 (AIR p. 1139, para 27) a Constitution Bench of this Court held that "inconvenience is not" a decisive factor to be considered while interpreting a statute. In *Martin Burn Ltd.* v. *Corpn. of Calcutta* AIR 1966 SC 529, this Court, while dealing with the same issue observed as under (AIR p. 535, para 14)

> "*14*. … A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must, of course, be given effect to whether a court likes the result or not."

(See also *CIT* v. *Vegetables Products Ltd.* (1973) 1 SCC 442 and *Tata Power Co. Ltd.* v. *Reliance Energy Ltd.*(2009) 16 SCC 659)

A 26. Therefore, it is evident that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision if the language used therein is unequivocal.

Addition and subtraction of words

B 27. The court has to keep in mind the fact that, while interpreting the provisions of a statute, it can neither add, nor subtract even a single word. The legal maxim "*A verbis legis non est recedendum*" means, "from the words of law, there must be no departure." A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. C The court cannot proceed with the assumption that the legislature, while enacting the statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to *add and* D *amend*, or by construction, make up for the deficiencies, which have been left in the Act. The Court can only iron out the creases, but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, *cannot add words* to a statute, or *read words into* it which are not part of it, especially when a literal reading of the same E produces an intelligible result. (Vide *Nalinakhya Bysack* v. *Shyam Sunder Haldar*, AIR 1953 SC 148, *Sri Ram Ram Narain Medhi* v. *State of Bombay*, AIR 1959 SC 459, *M. Pentiah* v. *Muddala Veeramallappa*, AIR 1961 SC 1107, *Balasinor Nagrik Coop. Bank Ltd.* v. *Babubhai Shankerlal Pandya* F (1987) 1 SCC 606 and *Dadi Jagannadham* v. *Jammulu Ramulu*, (2001) 7 SCC 71. SCC pp. 78-79, para 13.)

28. The statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. G The courts have to administer the law as they find it, and it is not permissible for the court to twist the clear language of the enactment in order to avoid any real or imaginary hardship which such literal interpretation may cause.

29. In view of the above it becomes crystal clear that under the H garb of interpreting the provision, the court does not have the

power to add or subtract even a single word, as it would not amount to interpretation, but legislation." A

Further, reliance has been placed on *Nalinakhya Bysack v. Shyam Sundar Haldar,* AIR 1953 SC 148. Following is the relevant observation made:

"(9)…It must always be borne in mind, as said by Lord Halsbury in *Commissioner for Special Purposes of Income Tax* v. *Pemsel*, (1891) A.C. 531 (G) that it is not competent to any court to proceed upon the assumption that the legislature has made a mistake. The Court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature, the court cannot, as pointed out in *Crawford* v. *Spooner*, 6 MOO. P.C. 1(H) aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is, as said by Lord Russell of Killowen in *Hansraj Gupta* v. *Official Liquidator of Dehra Dun-Mussoorie Electric Tramway Co., Ltd.*, AIR 1933 P.J. 63 (I) for others than the courts to remedy the defect. In our view it is not right to give to the word "decree" a meaning other than its ordinary accepted meaning and we are bound to say, in spite of our profound respect for the opinions of the learned Judges who decided them, that the several cases relied on by the respondent were not correctly decided." B C D E

There is no dispute with the propositions described above; however, when literal meaning in Section 9A, CPC is taken, it is apparent that expression jurisdiction has been used in the company to entertain. Both the expressions taken together have to be given the meaning i.e., the Court should have the power or inherent jurisdiction to receive a suit for consideration to initiate a trial. When we test on the anvil of hardship caused by the exclusion of question of limitation from the jurisdiction to entertain, being tested in the right spirit, it rebounds upon to negate the submission. F

CONCLUSION G

77.(a) Given the discussion above, we are of the considered opinion that the jurisdiction to entertain has different connotation from the jurisdictional error committed in exercise thereof. There is a difference between the existence of jurisdiction and the exercise of jurisdiction. The expression jurisdiction has been used in CPC at several H

A places in different contexts and takes colour from the context in which it has been used. The existence of jurisdiction is reflected by the fact of amenability of the judgment to attack in the collateral proceedings. If the court has an inherent lack of jurisdiction, its decision is open to attack as a nullity. While deciding the issues of the bar created by the law of limitation, *res judicata*, the Court must have jurisdiction to decide
B these issues. Under the provisions of section 9A and Order XIV Rule 2, it is open to decide preliminary issues if it is purely a question of law not a mixed question of law and fact by recording evidence. The decision in *Foreshore Cooperative Housing Society Limited* (supra) cannot be said to be laying down the law correctly. We have considered the
C decisions referred to therein, they are in different contexts. The decision of the Full Bench of the High Court of Bombay in *Meher Singh* (supra) holding that under section 9A the issue to try a suit/jurisdiction can be decided by recording evidence if required and by proper adjudication, is overruled. We hold that the decision in *Kamlakar Shantaram* (supra) has been correctly decided and cannot be said to be *per incuriam*, as
D held in *Foreshore Cooperative Housing Society Limited* (supra).

77.(b) Section 2 of Maharashtra Second Amendment Act, 2018 which provides that where consideration of preliminary issue framed under section 9A is pending on the date of commencement of the CPC, the said issue shall be decided and disposed of by the court under section
E 9A as if the provision under section 9A has not been deleted, does not change the legal scenario as to what can be decided as a preliminary issue under section 9A, CPC, as applicable in Maharashtra. The saving created by the provision of section 2 where consideration of preliminary issue framed under section 9A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Act, 2018,
F can be decided only if it comes within the parameters as found by us on the interpretation of section 9A. We reiterate that no issue can be decided only under the guise of the provision that it has been framed under section 9A and was pending consideration on the date of commencement of the (Maharashtra Amendment) Act, 2018. The
G reference is answered accordingly.

78. Let the matters be placed before an appropriate Bench for consideration on merits.

Devika Gujral Reference answered.