

## **THE GOA CIVIL COURTS ACT, 1965**

### **Is the High Court of Bombay at Goa authorised to hear an appeal from a decree of the District Court in a suit where the government is a party?**

The Goa Civil Courts Act 1965 was extensively amended in the year 2004 by The Goa Civil Courts ( Amendment ) Act, 2004 ( Act 5 of 2004 ). One significant amendment related to Section 26 of the said Act. As a result of this amendment, it is only a district court which can now entertain a civil suit where the government or any officer of the government in his official capacity is a party. Section 96 of the Code of Civil Procedure, 1908 provides for an appeal from every decree passed by any court exercising original jurisdiction. Since the High Court of Bombay at Goa is a court superior to the District Court in the hierarchy of courts, appeals from decrees passed by the District Courts in such suits filed under Section 26 of the Goa Civil Courts Act are filed in the High Court by assuming that the High Court has jurisdiction to entertain and hear such appeals. But the courts in India do not function on the basis of such assumptions; the courts function on the basis of jurisdiction created by law. Before proceeding further, it is necessary to understand what is jurisdiction and how jurisdiction is conferred on the courts in India.

#### **JURISDICTION:**

Jurisdiction is the foundation of judicial proceedings. It is the authority given to a court to inquire into the facts, apply the law, decide the cause and render a judgement. When there is want of this general power to act, it can be said that the court has no jurisdiction.

In this connection, attention is invited to the judgement of a three judge bench of the Supreme Court of India delivered on the 4th of October 2019 in the case of Nusli Neville Wadia v. Ivory Properties in Special Leave Petition (Civil) Nos. 31982 - 31983 of 2013. The Judgement was delivered by Justice Arun Mishra for self and on behalf of Justice M. R. Shah and Justice B. R. Gavai. In this case the Supreme Court was essentially considering the scope of the expression "jurisdiction" in Section 9A of the Code of Civil Procedure, 1908 as inserted by the Maharashtra Amendment Act of 1977. The question before the court was whether the expression "jurisdiction" in the said section is used in a narrow sense, that is the court's authority to entertain the suit at the threshold or is it used in the broader sense to include the issue of bar of limitation as well. The court ultimately came to the conclusion that the expression "jurisdiction" in the said section is used only in a narrow sense. It refers to court's authority to entertain the suit at the threshold only and does not include the issue of bar of limitation.

The Supreme Court has made some important observations on the aspect of inherent jurisdiction of courts in the course of the said judgement. The relevant excerpts from the said judgement are reproduced hereinbelow:

"16. .... Jurisdiction is the authority of the 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 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. .... Jurisdiction is the right to hear and determine. .... 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 judgement 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 is generally understood as the authority to decide, render a judgement, inquire into the facts, to apply the law, and to pronounce a judgement. 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 judgement, and enforce it, the court has jurisdiction. .... 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."

From the above observations it is clear that the courts in the country can only entertain a cause when authority or jurisdiction to entertain such cause is conferred on them.

It is a settled position in law that an act of creation, alteration or abolition of jurisdiction of courts in India is legislative in character. In other words jurisdiction of courts can only be created, altered or abolished by law. No court, even the highest, can create jurisdiction in itself. Similarly, even consent of parties cannot create jurisdiction in a court.

In this connection, attention is invited to the judgement of the Constitution Bench of the Supreme Court delivered in the case of A. R. Antulay v. R. S. Nayak reported in (1988) 2 SCC 602. In this case the Supreme Court was essentially reviewing its own earlier order. By the impugned order Supreme Court had transferred the case filed against the then Chief Minister of Maharashtra Shri. A. R. Antulay under the Prevention of Corruption Act from the Special Judge appointed under the said Act to the High Court of Bombay for expeditious disposal.

To better appreciate the legal position, relevant excerpts from the said judgement are reproduced hereinbelow:

Per Ranganath Misra, J.

"91. It is settled position in law that Jurisdiction comes solely from the law of the land and cannot be exercised otherwise. So far as the position in this country is concerned conferment of jurisdiction is possible either by the provisions of the Constitution or by specific laws enacted by the legislature. For instance, Article 129 confers all the powers of a court of record on the Supreme Court including the power to punish for contempt of itself. Articles 131, 132, 133, 134,

135, 137, 138 and 139 confer different jurisdictions on the Supreme Court while Articles 225, 226, 227, 228 and 230 deal with conferment of jurisdiction on the High Courts. Instances of conferment of jurisdiction by specific law are very common. The laws of procedure both criminal and civil confer jurisdiction on different courts. Special jurisdiction is conferred by special statute. It is thus clear that jurisdiction can be exercised only when provided for either in the Constitution or in the laws made by the legislature. Jurisdiction is thus the authority or power of the court to deal with a matter and make an order carrying binding force in the facts. ...."

Per Oza, J.

"110. It is clear from the opinions of learned brothers Justice Mukharji and Justice Misra that the jurisdiction to try a case could only be conferred by law created by the legislature and this court could not confer jurisdiction if it does not exist in law. ...."

Per Ray, J.

"112. .... It has also been observed that the jurisdiction or power to try and decide a cause is conferred on the courts by the law of the land enacted by the legislature or by the provisions of the Constitution. It has also been highlighted that the court cannot confer a jurisdiction on itself which is not provided in the law. ...."

It is, therefore, abundantly clear that jurisdiction is the authority conferred on the court by law to entertain a particular cause. When such an authority is lacking in the court, it can be said that the court has no jurisdiction to entertain that particular cause. But, the question that still remains is how to determine whether the court has jurisdiction to entertain a particular cause. There is no fixed yardstick to determine jurisdiction of courts which can be applied uniformly in all cases. It is now well settled that the word "jurisdiction" displays a certain colour depending on the context in which it is mentioned. It is used in a variety of senses and takes its colour from its context in which it is used as observed in the celebrated case of Anisminic Ltd. v. Foreign Compensation Commission, [1968] 2 Q.B. 862. This dictum has been followed consistently by the courts in India.

#### FORUMS FOR APPEAL FROM THE ORIGINAL DECREES OF COURTS:

In the context of appeals from original decrees of courts, the relevant provision to be looked at is Section 96 of the Code of Civil Procedure, 1908. The phraseology of this section provides the key to determine which forums have the legal competence to hear appeals from original decrees of courts. Reproduced hereinbelow is the relevant excerpt of the said section:

**" Section 96. Appeal from original decree - (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.**

This section in terms does not confer jurisdiction on courts. But it emphatically says that an appeal shall lie to the court authorised to hear appeals from the decisions of such court. This authority is found only in the provisions of the Civil Courts Acts enacted by the legislatures of respective States. In Goa, it is the Goa Civil Courts Act, 1965.

The said section 96 of the Code came up for consideration before a Full Bench of the Kerala High Court in the case of P. D. Devaswom v. U. Pylee reported in AIR 1970 Kerala 30. The court was considering Section 96 in the same context. Reproduced hereinbelow is the relevant excerpt from the said judgement delivered by Justice P. T. Raman Nayar on behalf of self and on behalf of Justice V. Balakrishna Eradi and Justice V. R. Krishna Iyer :

*" 7. .... But the forum for a first appeal is specified not by section 96 of the Code which only says that the appeal shall lie to the court authorised to hear appeals from the decisions of the court which passed the decree, but by the concerned Civil Courts Act. And, under those Acts, the value of the subject-matter would determine whether an appeal from a decision of a Subordinate Judge lies to the District Court or to the High Court. ...."*

It is, therefore, clear that in terms of Section 96 of the Code an appeal can lie only before the court which is authorised to hear such an appeal, and this authority is given to courts by the concerned Civil Courts Act. In Goa, it is the Goa Civil Courts Act, 1965.

#### GOA CIVIL COURTS ACT, 1965

It is now necessary to examine the provisions of the Goa Civil Courts Act, 1965 with reference to jurisdiction of courts prior to the Amendment Act no. 5 of 2004.

The provisions of the Goa Civil Courts Act, 1965 relevant for our purpose are reproduced hereinbelow :

*" Section 6. **Appellate jurisdiction of District Court.** - Save as otherwise expressly provided in this Act, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force."*

*" Section 20. **Classes of Civil Judges and their jurisdiction.** - (1) The Civil Judges shall be of two classes, namely Senior Civil Judges and Junior Civil Judges.*

*(2) The Jurisdiction of a Senior Civil Judge extends to all original suits and proceedings of a Civil nature.*

*(3) The jurisdiction of a Junior Civil Judge extends to all original suits and proceedings of a civil nature wherein the subject matter does not exceed in amount or value one lakh rupees."*

*( This limit was enhanced to twenty lakh rupees by the Goa Civil Courts ( Amendment ) Act, 2009 ( Act 22 of 2009 )*

*" Section 22. Appeals from his decision. - In all suits decided by a Civil Judge of which the amount or value of the subject matter exceeds one lakh the appeal from his decision shall be direct to the High Court. "*

*( This limit was enhanced to rupees twenty lakhs by the Goa Civil Courts ( Amendment ) Act, 2009 ( Act 22 of 2009)*

*" Section 26. Suits in which the Government is a party. - (1) No Court other than the Senior Civil Judge shall receive or register any suit in which the Central Government or the Administrator of the Government of Goa, Daman and Diu or any officer of the Government in his official capacity, is a party:*

*Provided that the Administrator may by general or special order notified in the Official Gazette, direct that the provisions of this section shall not apply to any suit or class or category of suits of the nature referred to therein.*

*(2) Nothing in this section shall be deemed to apply to a suit against the administration of a Government Railway. "*

*( As it stood prior to the Amendment Act No. 5 of 2004 )*

A perusal of the above provisions bring out the following aspects:

- (1) There are two classes of Civil Judges, namely Senior Civil Judges and Junior Civil Judges.
- (2) Any original civil suit where the subject matter is valued upto rupees one lakh ( now twenty lakhs) lies before the Junior Civil Judge.
- (3) Any original civil suit where the subject matter is valued above rupees one lakh ( now twenty lakhs) lies before the Senior Civil Judge.
- (4) But any civil suit where the government is a party, whether the subject matter of the suit is valued upto rupees one lakh or above rupees one lakh ( now twenty lakhs) the civil suit lies only before the Senior Civil Judge. ( Kindly see Section 26 )
- (5) Unless otherwise provided in the said Act, the District Court is the Court of Appeal from all decrees and orders passed by the subordinate Courts. ( Kindly see Section 6 ).
- (6) But Section 22 provides that appeals will lie directly to the High Court from all decrees and orders of the Civil Judges in suits valued above rupees one lakh ( now rupees twenty lakhs ) including suits where government is a party. A fortiori, appeals from decrees and orders of the Civil Judges only in suits valued below rupees one lakh ( now rupees twenty lakhs ) including suits where government is a party lies before the District Court in terms of Section 6.

These provisions are complete and does not pose any difficulty in determination of forums for appeal even in relation to decrees and orders passed by subordinate courts in suits where government is a party.

The above position stood substantially altered after the passage of the Goa Civil Courts ( Amendment Act ) Act no. 5 of 2004. Section 26 stood amended by the said Amendment Act. Similarly, another section, namely, Section 26A was inserted in the principal Act by the same Amendment Act.

Section 26 after the amendment and the newly introduced Section 26A are reproduced hereinbelow:

*" Section 26. **Suits in which the Government is a party.** - (1) No Court other than the District Court shall receive or register any suit in which the Central Government or the Administrator of the Government of Goa, Daman and Diu or any officer of the Government in his official capacity, is a party:*

*Provided that the Administrator may by general or special order notified in the Official Gazette, direct that the provisions of this section shall not apply to any suit or class or category of suits of the nature referred to therein.*

*(2) Nothing in this section shall be deemed to apply to a suit against the administration of a Government Railway."*

*" 26A. - **Transfer of pending suits and bar on jurisdiction.** - All suits received or registered under section 26 and pending before any Court of a Senior Civil Judge immediately before the commencement of the Goa Civil Court's ( Amendment ) Act, 2004, shall, on such commencement, stand transferred to the District Court of the concerned district and such District Court may proceed to deal with such suit from the stage which was reached before such transfer or from any earlier stage or de novo, as such District Court may deem fit and no Court of any Senior Civil Judge shall entertain, try, dispose off or proceed to hear any matter where the Central Government or the Government of Goa or any officer of the Government in his official capacity, is a party to the proceedings."*

By amending Section 26, jurisdiction to entertain suits where government is a party whether the suit was valued upto rupees one lakh or above rupees one lakh ( now rupees twenty lakhs ) was conferred exclusively on the District Court from the date of the Amendment Act No. 5 of 2004. By Section 26A all such suits which were pending adjudication before the Senior Civil Judges on the date of this amendment stood transferred to the concerned District Courts. The said section also provided that henceforth no Court of Senior Civil Judge shall entertain or hear or dispose of any matter where the government was a party.

Now the question that arose was before which court would an appeal lie from a decree passed by a Senior Civil Judge immediately before the said amendment in a suit valued at or below rupees one lakh ( now rupees twenty lakhs ) where the government was a party ? It was noticed that in terms of the existing provisions the District Court was still the court of appeal from any such decree passed by a Senior Civil Judge. In the absence of any further consequential amendments, a very peculiar situation arose under the said Act. On one end the District Court was now the court authorised to entertain a suit where government was a party, whereas on the other end District Court was still the court of appeal from any order and decree passed by a Senior Civil Judge immediately before the amendment of Section 26 in 2004 in a suit where government was a party and the suit was valued at or below rupees one lakh ( now rupees twenty lakhs ). It was also noticed that many such appeals filed before the Goa Civil Courts ( Amendment ) Act, 2004, were still pending adjudication before the District Courts in Goa. To rectify this anomaly the Goa Civil Courts Act, 1965 was amended yet again in the year 2005. The Goa Civil Courts ( Amendment ) Act, 2005 ( Act 16 of 2005 ) was enacted on 07/10/2005 by virtue of which another section, namely Section 26B was introduced in the principal Act. The said section is reproduced hereinbelow:

" **26B. Appeals.** - Notwithstanding anything contained in section 6, -

(a) an appeal shall lie to the High Court having jurisdiction over the State of Goa, from all decrees made by any Court of a Senior Civil Judge before the commencement of the Goa Civil Courts ( Amendment ) Act, 2004 ( Act 5 of 2004 ), in any suit where the Central Government or the Government of Goa or any officer of the Government in his official capacity, is a party to the proceedings:

(b) *all appeals from any decree made by any Court of a Senior Civil Judge in any suit where the Central Government or the Government of Goa or any officer of the Government in his official capacity, is a party to the proceedings, pending before any District Court as on the date of commencement of the Goa Civil Courts ( Amendment ) Act, 2004 ( Act 5 of 2004 ), shall stand transferred to the High Court having jurisdiction over the State of Goa. "*

By this amendment Act, all appeals from decrees of a Senior Civil Judge in suits where government was a party which were pending before the District Court as on the date of commencement of the Goa Civil Courts ( Amendment ) Act, 2004 were transferred to the High Court. It was also provided that any appeal from any decree made by a Senior Civil Judge in suits where the government was a party prior to the commencement of the said Amendment Act shall now lie to the High Court.

Sadly, however, no consequential amendment has yet been made in the principal Act to provide a forum for an appeal from the orders and decrees made by the District Court in suits where the government is a party.

As said at the beginning, appeals from such decrees are filed before the High Court of Bombay at Goa since the High Court is a court superior to the District Court in the hierarchy of courts. But Section 96 of the Civil Procedure Code, 1908 which creates the right of appeal from original decrees, in terms, says that such an appeal shall lie to the court authorised to hear such appeals. We have also seen that the jurisdiction of courts is essentially a legislative act, that is to say jurisdiction is conferred by law. It is also settled that forums for appeal are provided for in the respective Civil Courts Act.

#### PROVISIONS IN THE CIVIL COURTS ACTS OF SOME OTHER STATES.

At this point in time, it may be appropriate to examine the provisions relating to appeals existing in the Civil Courts Acts of some other States.

The Gujarat Civil Courts Act, 2005 was enacted to consolidate and amend the law relating to Civil Courts in the State of Gujarat. Sub-section (1) of Section 15 of the said Act provides forums for an appeal. The said provision is extracted hereinbelow:

*" 15 (1) Appeals from the decrees and orders passed by a Court of District Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie to the High Court.*  
*....."*

Similarly, Section 13 of Chapter III of the Madhya Pradesh Civil Courts Act, 1958 deal with Appellate Jurisdiction. Relevant portion of Sub-section (1) of Section 13 is reproduced hereinbelow:

*" 13. Appellate jurisdiction.- (1) Save as otherwise provided by any law for the time being in force, appeals from decrees or orders of Courts exercising original jurisdiction shall lie as follows:*  
*( a ).....*

*( b ) from a decree or order of the Court of the District Judge to the High Court.*

*....."*

Karnataka Civil Courts Act, 1964 is another statute that contains a similar provision. Section 18 of the said Act deals with appeals from decrees and orders of District Courts. The said section is reproduced hereinbelow:

*" 18. Appeals from District Courts.- Appeals from the decrees and orders passed by a District Court in original suits and proceedings of a civil nature shall, when such appeals are allowed by law, lie to the High Court. "*



Now, in such a situation when the Goa Civil Courts Act has not provided a forum for an appeal from the orders and decrees made by the District Courts in suits entertained under Section 26 of the said Act, can the High Court of Bombay at Goa entertain such appeals? In other words can the High Court create a jurisdiction in itself when the law has not provided for the same?

It can certainly be said that the High Court of Bombay at Goa cannot entertain an appeal from the original decree of the District Court in a suit received by it under Section 26 of the Goa Civil Courts Act, 1965.

Now, can it be said that the intention of the legislature was to confer jurisdiction on the High Court to hear appeals from original decrees of the District Court in suits filed under Section 26 of the Goa Civil Courts Act, 1965 after the Amendment Act No.5 of 2004, and that such an intention can well be gathered from Section 26B of the said Act as introduced by the Amendment Act No. 17 of 2005 ? Will such an argument stand the test of law ?

The fundamental principles of interpretation of statutes will have to be looked into to deal with such an argument.

#### PRINCIPLES OF INTERPRETATION OF STATUTES:

Literal construction or literal interpretation is the cardinal rule of interpretation of a 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 injustice.

" *A verbis legis non est recedendum* " means, " from the words of law, there must be no departure. " 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 produces an intelligible result, as that would not amount to interpretation, but legislation.

Similarly, a statute cannot be interpreted in the 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. The courts must administer the law as they find it. As said by Lord Russell of Killowen in *Hansraj Gupta v. Official Liquidator of Dehra Dun- Mussoorie Electric Company Ltd*, reported in AIR 1933 P.J. 63 (I) "*Even where there is a casus omissus, it is, for others than the courts to remedy the defect.*"

The aforesaid principles are culled out from the decision of the Supreme Court in the case of *Rohitash Kumar and others v. Om Prakash Sharma and others* reported in (2013) 11 SCC 451. The said decision has been relied upon by the three judge bench of the Supreme Court in the recent case of *Nusli Neville Wadia* referred to hereinbefore. Following are the excerpts from the judgement of the Supreme Court in the case of *Rohitash Kumar* :

"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 and 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. "

" 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. "

" 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 its parts together, and it is not permissible to omit any part thereof. 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 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 produces an intelligible result. (Vide Nalinakhya Bysack v. Shyam Sunder Haldar, AIR 1953 SC 148, .....) "

" 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. 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 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."

Applying the said principles of interpretation of statutes as summarised by the Supreme Court in the case of Rohitash Kumar, it is necessary to see if any other rules of interpretation can be brought in aid to interpret Section 26B of the Goa Civil Courts Act, 1965 other than the literal rule.

As already stated hereinbefore, before introduction of Section 26B in the statute book, Section 22 read with Section 6 of the Goa Civil Courts Act, 1965, provided forum for appeals from all orders and decrees of the subordinate courts including suits where government was a party presented in the court of a Senior Civil Judge under pre-amended Section 26. The same provisions continued to operate even after the amendment of Section 26 in the year 2004. Even after jurisdiction to entertain suits where the government was a party was conferred on the District Court, it was noticed that the District Court still continued to be the court of appeal from an order and decree made by a Senior Civil Judge in a similar suit filed prior to the amendment of Section 26. Filing of an appeal before the District Court in such a situation would amount to filing of the appeal before the same court which was now authorised to receive and entertain an identical suit. As pointed out earlier Section 26B was introduced in the principal Act only to remove this anomaly. Since the language of Section 26B is plain and hence allows only one meaning, the same has to be given effect. The meaning becomes clear upon a bare perusal of this section. A reading of the said section will show that the same cannot be interpreted in any other way. Any attempt to alter the meaning of the said section either by adding words or twisting its clear language would amount to re-writing the statute which is not permissible as such an exercise does not fall within the domain of the courts.

CAN ANY AID BE SOUGHT FROM SECTION 24 (1) (b) (i) AND SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908 BY THE HIGH COURT TO ASSUME JURISDICTION TO ENTERTAIN SUCH AN APPEAL?

There is yet another question which may require consideration. Now, Section 24 of the Code of Civil Procedure, 1908 empowers a High Court to withdraw any suit, appeal or other proceeding pending before a subordinate court to itself and try or dispose of the same. Does this section

authorise the High Court to directly entertain an appeal from decree in a suit decided by any subordinate court?

The relevant portion of the said section is extracted hereinbelow for the purpose of convenience:

**"24. General power of transfer and withdrawal.- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage -**

(a) .....

(b) *withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and*

*(i) try or dispose of the same; or*

....."

The Supreme Court of India had the occasion to consider the scope of the aforesaid S. 24 (1) (b) (i) in the case of *Raja Soap Factory v. S. P. Santharaj* reported in AIR 1965 Supreme Court 1449. The Supreme Court has held that this power of withdrawal of proceeding can only be exercised by the High Court when such proceeding is found to be lawfully instituted in a subordinate court of competent jurisdiction. By holding so, the Supreme Court has in clear terms recognised the difference between the power of transfer contained in Section 24 and the concept of jurisdiction of a court. The relevant paragraph of the judgement is reproduced hereinbelow:

*" (7) Section 24 of the Code of Civil Procedure on which counsel for the plaintiffs relied lends no assistance to his argument. Among the powers conferred upon a High Court by S. 24 Code of Civil Procedure, there is enumerated the power to withdraw any suit, appeal or other proceeding in any Court subordinate to it, and to try or dispose of the same: [ S. 24 (1) (b) (i) ] . But jurisdiction to try a suit, appeal or proceeding by a High Court under the power reserved by S. 24 (1) (b) (i) arises only if the suit, appeal or proceeding is properly instituted in a Court subordinate to the High Court, and the suit, appeal or proceeding is in exercise of the power of the High Court transferred to it. Exercise of this jurisdiction is conditioned by the lawful institution of the proceeding in a subordinate Court of competent jurisdiction, and transfer thereof to the High Court. Power to try and dispose of a proceeding after transfer from a Court lawfully seized of it does not involve a power to entertain a proceeding which is not otherwise within the cognizance of the High Court."*

The next question is whether inherent powers of Court contained in Section 151 of the Code of Civil Procedure be brought in aid to create power in the High Court to hear an appeal from decree of any subordinate court?

Section 151 of the Code reads thus:

*" 151. **Saving of inherent powers of Court.-** Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. "*

In the same judgement of Raja Soap Factory, the Supreme Court also had the occasion to consider the scope of Section 151 of the Code. The Court has held that this power does not authorise the High Court to invest itself with jurisdiction where it is not conferred by law. The relevant paragraph of the judgement is reproduced hereinbelow:

*" (8) Section 151 of the Code of Civil Procedure preserves the inherent power of the Court as may be necessary for the ends of justice or to prevent abuse of the process of the Court. That power may be exercised where there is a proceeding lawfully before the High Court; it does not, however, authorise the High Court to invest itself with jurisdiction where it is not conferred by law."*

This judgement still holds the field. The same is relied upon by the Supreme Court in its recent judgement dated 4th October, 2019 delivered in the case of Nusli Neville Wadia.

#### CONCLUSION:

In conclusion, it can only be said that the High Court of Bombay at Goa is not authorised by the provisions of the Goa Civil Courts Act, 1965, to entertain an appeal from the original order and decree made by a District Court in suits filed under Section 26 of the said Act as amended by the Goa Civil Courts ( Amendment ) Act, 2004.

But law is a field where there can be different opinions, even diverse. That is the reason why on many occasions after hearing the same matter, the judges express divergent opinions. Similarly, on this issue too there could be more than one opinion.

If this is held to be the correct position in law, then what legal effect will it have on the orders, judgements and decrees made by the High Court of Bombay at Goa in innumerable Appeals entertained by it after the Amendment Act No. 5 of 2004 to the Goa Civil Courts Act, 1965?

It is interesting to notice what the Supreme Court of India has observed in the case of Nusli Neville Wadia. The Supreme Court has held if there is inherent lack of jurisdiction to entertain a cause then the decision of the court in such a cause is open to attack as a nullity.

Reproduced hereinbelow is the relevant excerpt from the said judgement:

**" CONCLUSION**

77. (a) ..... *The existence of jurisdiction is reflected by the fact of amenability of the judgement to attack in the collateral proceedings. If the court has an inherent lack of jurisdiction, its decision is open to attack as a nullity. .....*"

The Full Bench of the Kerala High Court in the case of P. D. Devaswom has made the following observation :

" 12. .... *The result of our decision might, perhaps, be to render the decisions in those appeals void. This is a problem beyond our province but is, we think capable of a ready solution by the Legislature.* ....."

In the obtaining situation, therefore, all the orders, judgements and decrees made by the High Court of Bombay at Goa in appeals from decrees of the District Court in suits received under Section 26 of the Goa Civil Courts Act, 1965, will be rendered "void". It will be appropriate for the State Legislature to take steps to amend the Goa Civil Courts Act, 1965, in order to validate and confer legitimacy on all such orders, judgements and decrees made by the High Court of Bombay at Goa, if the same is permissible in law.

*SAMEER A. BANDODKAR  
ADVOCATE, PANAJI, GOA.*

*17 TH DAY OF AUGUST, 2020*

**( This article represents the view of  
the author )**