

BAR OF COGNIZANCE BY SMALL CAUSES COURT

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Section 15 of the Small Causes Court Act, 1887 provides for the cognizance of suits by Courts of Small Causes.

Section 15 Cognizance of suits by Courts of Small Causes-

(1) A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits expected from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five thousand rupees shall be cognizable by a Court of Small Causes.

Provided that in relation to suits by the lessor for the eviction of a lessee from a building after determination of his lease or for recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease, or of compensation for use and occupation thereof after the determination of the lease, the reference in this sub-section to five thousand rupees shall be construed as a reference to twenty-five thousand rupees.

[Explanation: For the purposes of this sub-section, the expression 'building' has the same meaning as in Article (4) in the Second Schedule.]

Second Schedule

Suits exempted from the cognizance of Court of Small causes

- (1) A suit concerning any act done or purporting to be done by or by order of the Central Government, the Crown Representative or the State Government.
- (2) a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his office;
- (3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office;
- (4) a suit for the possession of immovable property or for the recovery of an interest in such property;
- (5) a suit for the partition of immovable property;
- (6) a suit by a mortgagee of immovable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immovable property for the redemption of the mortgage;

- (7) a suit for the assessment, enhancement, abatement or apportionment of the rent of immovable property;
- (8) a suit for the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the State Government with authority to exercise jurisdiction with respect thereto;
- (9) a suit concerning the liability of land to be assessed to land-revenue;
- (10) a suit to restrain waste;
- (11) a suit for the determination or enforcement of any other right to or interest in immovable property;
- (12) a suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions;
- (13) a suit to enforce payment of the allowance or fees respectively called malikana and hakk, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immovable property or in an hereditary office or in a shrine or other religious institution;

- (14) a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act, 1870 (1 of 1870), the whole or any part of the compensation;
- (15) a suit for the specific performance or rescission of a contract;
- (16) a suit for the rectification or cancellation of an instrument;
- (17) a suit to obtain an injunction;
- (18) a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution;
- (19) a suit for a declaratory decree, not being a suit instituted under section 283 or section 332 of the Code of Civil Procedure;
- (20) a suit instituted under section 283 or section 332 of the Code of Civil Procedure;

- (21) a suit to set aside an attachment by a Court or a revenue authority, a sale, mortgage, lease or other transfer by a Court or a revenue - authority or by a guardian;
- (22) a suit for property which the plaintiff has conveyed while insane;
- (23) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity;
- (24) a suit to contest an award;
- (25) a suit upon a foreign judgment as defined in the Code of Civil Procedure (14 of 1882) or upon a judgement obtained in India;

(26) a suit to compel a refund of assets improperly distributed under section 329 of the Code of Civil Procedure;

(27) a suit under the Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets;

(28) a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate;

(29) a suit—

(a) for a dissolution of partnership or for the winding up of the business of a partnership after its dissolution;

(b) for an account of partnership-transactions; or

(c) for a balance of partnership account, unless the balance has been struck by the parties or their agents;

- (30) a suit for an account of property and for its due administration under decree;
- (31) any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits on immovable property belonging to the plaintiff which have been wrongfully received by the defendant;
- (32) a suit for a general average loss or for salvage;
- (33) a suit for compensation in respect of collision between ships;
- (34) a suit on a policy of insurance or for the recovery of any premium paid under any such policy
- (35) a suit for compensation—
 - (a) for loss occasioned by the death of a person caused by actionable wrong;
 - (b) for wrongful arrest, restraint or confinement;
 - (c) for malicious prosecution.

- (d) for libel;
- (e) for slander;
- (f) for adultery or seduction;
- (g) for breach of contract of betrothal or promise of marriage;
- (h) for inducing a person to break a contract made with the plaintiff;
- (i) for obstruction of an easement or diversion of a water -course;
1[(ii)for an act which is, or, save for the provisions of Chapter I V of the Indian Penal Code, 1860, would be, an offence punishable under Chapter XVII of the said Code;
- 2 [(j) for illegal, improper or excessive distress, attachment or search, or for trespass committed in, or damage caused by, the illegal or improper execution of any distress, search or legal process;
- (k) for improper arrest under Chapter XXXIV of the 3Code of Civil Procedure or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV of that Code; or
- (l) for injury to the person in any case not specified in the foregoing sub-clauses of this clause;

(36) a suit by a Muhammadan for exigible (mu'ajjal) or deferred (mu'waijal) dower;

(37) a suit for the restitution of conjugal rights, for the custody of a minor, or for a divorce;.

(38) a suit relating to maintenance;

(39) a suit for arrears of land-revenue, village-expenses or other sums payable to the

representative of a village -community or to his heir or other successor in title;

(40) a suit for profits payable by the representative of a village-community or by his heir or other successor in title after payment of land-revenue, village-expenses and other sums;

(41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by a manager of joint property, or a member of an undivided family in respect of a payment made by him on account of the property or family;

(42) a suit by one of several joint mortgagors of immovable property for contribution in respect of money paid by him for the redemption of the mortgaged property;

(43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land-revenue;

(43A) a suit to recover property obtained by an act which is, or, save for the provisions of Chapter IV of the Indian Penal Code, 1860, would be, an offence punishable under Chapter XVII of the said Code;)

(44) a suit, the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

- The Bar of cognizance by Courts of Small Causes was dealt with by The Hon'ble High Court of Uttarakhand in **Civil Revision No. 32 Of 2015 Senior Superintendent Of Police V Shanti Devi & Another**, whereby it was held that “Second Schedule to the Provincial Small Cause Courts Act enumerates the Suits which are excepted from cognizance of a Court of Small Causes. Article (4) of the Second Schedule was amended vide Uttar Pradesh Act No. 37 of 1972, which is extracted below:

“(4) a suit for the possession of immoveable property or for the recovery of an interest in such property, but not including a suit by a lessor for the eviction of a lessee from a building after the determination of his lease, and for the recovery from him of compensation for the use and occupation of that building after such determination of lease.

Explanation.- For the purposes of this Article, the expression ‘building’ means a residential or non-residential roofed structure, and includes any land (including any garden), garages, out- houses, appurtenant to such building, and also includes any fittings and fixtures affixed to the building for the more beneficial enjoyment thereof.”

19. From a conjoint reading of Section 15(2) and Article 4 of the Second Schedule, as applicable in State of U.P. & Uttarakhand, it is apparent that a suit by a Lessor for the eviction of a Lessee from a building after the determination of his lease, and for the recovery from him of compensation for the use and occupation of that building after such determination of lease, shall be cognizable by a Court of small causes.

20. Under Section 25 (1) of Bengal, Agra and Assam Civil Courts Act, 1887 High Court is vested with the power to confer upon any Civil Judge or Munisff, the jurisdiction of Judge of Court of Small Causes under the Provincial Small Causes Courts Act 1887, upto the value of Rs. 5,000/-. In respect of the suit by a Lessor against a Lessee, such valuation of Rs. 5,000/- has been enhanced to Rs. 25,000/-. Further, by virtue of Section 25 (2) of the said Act, High Court can confer upon any District Judge or Additional District Judge, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act for the trial of all suits, (irrespective of their value) by the Lessor for the eviction of a Lessee from a building after the determination of his lease, or for arrears of rent and mesne profits.

Section 25 (4) of the said Act provides further that where the jurisdiction of a Judge of a Small Causes is conferred upon a District Judge or Additional District Judge, than notwithstanding anything contained in Section 15 of Provincial Small Causes Courts Act 1887, all suits referred to in Sub Section (2) shall be cognizable by Court of Small Causes. Section 25 of Bengal, Agra and Assam Civil Courts Act is extracted below for ready reference:

“25. Power to invest Civil Judges and Munsifs with Small Cause Court jurisdiction-[(1) The High Court may by notification in the Official Gazette, confer within such local limits as it thinks fit, upon any Civil Judge or Munsif, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Court Act, 1887 or the trial of suits cognizable by such Courts, up to such value not exceeding five thousand rupees as it thinks fit, and may withdraw any jurisdiction so conferred:

Provided that in relation to suits of the nature referred to in the proviso to sub- section (2) of Section 15 of the said Act, the reference in this sub-section to five thousand rupees shall be construed as reference to twenty five thousand rupees.

(2) The [High Court] may by notification in the Official Gazette, confer upon any District Judge or any Additional District Judge the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of all suits (irrespective of their value), by the lessor for the eviction of a lessee from a building after the determination of his lease, or for the recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease or of compensation for the use and occupation thereof after such determination of lease and may withdraw any jurisdiction so conferred.

Explanation -For the purposes of the sub-section, the expression 'building' has the same meaning as in Art. (4) in the Second Schedule to the said act.

(3) [****]

(4) Where the jurisdiction of a Judge of a Court of Small Causes is conferred upon any District Judge or Additional District Judge by notification under this section, then notwithstanding anything contained in Sec.15 of the Provincial Small Cause Courts Act, 1887, all suits referred to in sub-section (2) shall be cognizable by Court of Small Causes.”

- Before State Reorganization, in erstwhile State of Uttar Pradesh, notifications were issued conferring jurisdiction of Small Cause Courts upon Munsiff in each local area for a valuation upto Rs. 5,000/-, upon Civil Judge (Senior Division) for a valuation above Rs. 5,000/- upto Rs. 25,000/- and the District Judge or Additional District Judge, irrespective of valuation of the suit. Those notifications are applicable in State of Uttarakhand also and District Judge can entertain a Small Cause suit irrespective of its valuation. Thus, learned District Judge was having jurisdiction to take cognizance of the Small Cause Suit filed by the respondents against the revisionist.
- The question whether a separate court of small causes is to be established at any place was discussed by the Hon'ble High Court of Uttarakhand in *Sohan Vir Singh v Kunwar Singh* and again relying upon the above provisions the Hon'ble High Court held that no separate court is to be established for cases related to Court of Small Causes.

Another Bar upon the Cognizance of Courts of Small Causes is provided in section 23 of the Act

Section 23- Return of complaints in suits involving questions of title.

- (1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the complaint to be presented to a Court having jurisdiction to determine the title.
- (2) When a Court returns a complaint under sub-section (1), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure (14 of 1882), and make such order with respect to costs as it deems just and the Court shall, for the purposes of the Indian Limitation Act, 1877 be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

Conclusion:

Thus there is a bar on the cognizance of court of small causes for all matters provided in the second schedule as well as matter involving questions of title.

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