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EXCLUSIVE JURISDICTION OF QUASI-JUDICIAL AUTHORITIES: *CAN CIVIL COURTS BE COMPLETELY EXCLUDED?*



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Exclusive Jurisdiction of Quasi-Judicial Authorities: Can Civil Courts Be Completely Excluded

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Introduction

The issue of jurisdiction is a phenomenal question plaguing the judiciary in all the matters that come before it for adjudication. One such question pertaining to jurisdiction is the exercise of jurisdiction by Civil Courts in relation to matters falling under a particular statute and subject to the exclusive jurisdiction of special tribunals or bodies constituted under the respective statute. Though the remedies provided under the statute and the powers conferred on the special authorities are exhaustive in nature, irrespective of the same the civil courts can exercise jurisdiction with respect to a particular matter, unless expressly or impliedly excluded from doing so.

Introduction: Section 9 of the CPC

Section 9 of the Code of Civil Procedure, 1908 (“CPC”) confers jurisdiction over the civil courts to adjudicate upon all suits of civil nature, except such suits the cognizance of which is either expressly or impliedly barred. In other words whenever the object of the proceedings is the enforcement of civil rights, a civil court would have jurisdiction to entertain the suit unless the cognizance of the same is barred through a legislative instrument.

There have been a plethora of judgements since time immemorial adjudicating upon the issue of jurisdiction of Civil Courts where special authorities have been constituted for adjudicating upon a specific subject matter of dispute. For instance, in ***Secretary of State v. Mask & Co.***¹ the Privy Council observed that:

“it is settled law that the exclusion of the jurisdiction of the civil court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied”.

Jurisdiction of Civil Courts: Section 397 matters under Act

The Act has by virtue of section 10GB expressly barred the jurisdiction of Civil Courts to entertain suits and proceedings falling within the exclusive jurisdiction of the Hon’ble Board. However, in the recent ruling of ***Greenline Transit System Pvt. v. The Secy. Cum Commissioner***² (“Greeneline Case”) by the Delhi High Court, the specific issue that came for consideration was whether the Learned (“Ld.”) Civil Judge had

¹ (67 I.A. 222)

² <http://indiankanoon.org/doc/110146812/>



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jurisdiction to decide upon a matter under section 397 and 398 of the Companies Act, 1956 which was subject to the exclusive jurisdiction of the Hon'ble Board and was pending before the Board. While determining the issue of jurisdiction, it was observed by the Hon'ble HC that where a dispute involves questions of common law, in the present case the same being a breach of the provisions of the shareholders' agreement entered into between the parties along with other acts of oppression, the Civil Courts may exercise their jurisdiction.

Another vital question that requires determination in the process of ascertaining the jurisdiction of a particular authority is the nature of the dispute and if at all it falls within the ambit of a particular statute or not?

For instance, in a recent Apex Court judgment of *Chatterjee Petrochem(I) v. Haldia Petrochemicals Ltd.& Ors.*³, the matter was adjudicated before the Hon'ble Company Law Board ("Board") under section 397 of the Act. However, one of the issues pertaining to the non-fulfillment of obligations under a private contract was wrongly adjudicated by the Board as a matter falling under section 397 of the Act. An appeal was preferred by the party aggrieved due to such breach of contract before the Hon'ble Supreme Court. The Hon'ble Apex Court in relation to the same held that the breach of the private contract cannot be taken to be the failure on the part of the company but it was a failure of one of the parties to a private arrangement to abide by its commitment and therefore the remedy in such a case did not fall under section 397 of the Act. It further observed that even if the Hon'ble Board had given a finding that the acts of oppression had been established, it would still be in a position to pass orders under section 397 of the Act. Nevertheless, since the same was not the case, the instant appeal was dismissed by the Hon'ble Apex Court on the ground that the matter does not fall within the scope of section 397 of the Act.

The Greenline Case

a. Facts:

The Respondents in the instant petition, being aggrieved by the acts of the Petitioners herein approached the Ld. Civil Judge claiming restraint on the Petitioner to operate a bank account which was operated by him as a sole signatory against the terms of the shareholders agreement as entered into between the Petitioners and the Respondent 2. The Petitioner and the Respondent 2 who was director of a company had entered

³ <http://www.indiankanoon.org/doc/1814805/>

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into a shareholder's agreement wherein it was agreed that a bank account will be maintained by them in furtherance to the agreement and the Petitioner as well as Respondent 2 shall be the joint signatories to the same. However, subsequently, the Petitioner opened a bank account with another bank where he was the sole signatory and transferred the funds from the previous bank account to the account where the Respondent 2 was not a signatory. Therefore the suit was filed by the Respondent 2 in personal capacity against the Petitioner herein. However, the Petitioner contended that being a subject matter under section 397 and 398 of the Act, the same is within the exclusive jurisdiction of the Board and hence the jurisdiction of the Civil Court to entertain such matters is barred under law.

The Ld. Civil Judge and the Ld. Sr. Civil Judge upheld the maintainability of the suit. Further the Ld. Sr. Civil Judge also upheld the decision of the Ld. Civil Judge declaring a breach of the shareholder's agreement by the Petitioner herein.

The instant petition has been filed by the Petitioner under Article 227 of the Constitution of India ("**Constitution**") against the orders passed by the Ld. Civil Judge and the Ld. Sr. Civil Judge. The major issue for consideration, inter alia, is that whether the impugned orders suffer from a jurisdictional error or not i.e. whether a matter under section 397 and 398 of the Act can be subject to the jurisdiction of the Civil Court or not?

The Petitioner placed reliance on the Apex Court ruling of ***HB Stockholding Ltd. v. DCM Shriram Industries Ltd.***⁴, wherein it has been held that the grounds on which the relief was being sought before this Court were more or less similar to what was sought before the Company Law Board. Consequently, rejecting the plaint, this Court found that there is an implied bar upon the Civil Court to entertain matters which are under the purview of Sections 397, 398 and 402 of the Act.

b. Judgement:

The Hon'ble High Court differentiated between the aforesaid ruling and the instant case on the grounds of facts and also held that the reliefs claimed before the Board and the Civil Court by the Respondent cannot be held to be the same. The Hon'ble Court for purposes of determination of the issue of jurisdiction, placed reliance on a plethora of

⁴ (2009) DLT 443

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judgements, for instance, in the case of **CDS Financial Series v. BPL Communications**⁵, it was held by the Hon'ble Bombay High Court that:

"It is clear that when there is no express provision excluding jurisdiction of the civil courts, such exclusion can be implied only in cases where a right itself is created and the machinery for enforcement of such right is also provided by the statute. If the right is traceable to general law of contract or it is a common law right, it can be enforced through civil court, even though the forum under the statute also will have jurisdiction to enforce that right."

The Hon'ble High Court also relied upon the decision of the Hon'ble Apex Court in **Dhulabai v. State of Madhya Pradesh**⁶ where a 5 Judge Bench held that:

"(1) Where the statute gives finality to the orders of the special tribunals, the civil courts jurisdiction must be held to be excluded, if there is adequate remedy to do what the civil courts would normally do in a suit. Such a provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of jurisdiction of the court an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary if the statute creates a special right or liability and provides for the determination of the right or liability and further lays downs that all questions about the said right or liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with action in civil courts are prescribed by the said statute or not. An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set out apply."

Further the Hon'ble High Court also took into consideration the provisions of the Companies Bill, 2009 ("Bill") and stated that Section 391 of the Bill has expressly

⁵ 2004 (121) Comp. Cases 374 Bom.

⁶ 1969 AIR 78



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excluded the jurisdiction of the Civil Courts in entertaining company disputes and avoid jurisdictional ambiguities. Drawing a comparison between section 391 of the Bill and section 397 of the Act, the Hon'ble Court came to a conclusion that in the context of the present Act, it is very clear and unambiguous that the shareholders who are qualified to approach the Company Law Board under section 397/398 and may choose to approach the Civil Court rather the Company Law Board. Therefore, it is settled that there is no express bar on the jurisdiction of the Civil Courts in matters pertaining to intra-company disputes.

Relying on the aforementioned precedents and observations, the Hon'ble High Court held that the Ld. Civil Judge and the Ld. Sr. Civil Judge had primarily relied on the shareholder's agreement to determine the rights of the parties thereunder. Further it was also held that the Respondent was right in approaching the Civil Court for the enforcement of his rights under the agreement. Additionally, the Hon'ble High Court holding its power under Article 227 to be supervisory and not appellate in nature refused to interfere with the order of the learned trial courts.

CONCLUSION

The precedents laid down by the judicial authorities clearly establish the general rule that despite the existence of special authorities for the adjudication of disputes arising under a particular statute, the jurisdiction of civil courts to adjudicate the same cannot be barred. Section 9 of CPC substantiated by various precedents to that effect has conferred wide powers on the civil courts enabling the courts to entertain disputes falling within the exclusive jurisdiction of a special authority. For instance, where the special authority so constituted fails to deliver proper justice or unless expressly or impliedly barred, the civil courts can very well entertain such matters.

As very well established by the recent ruling of the Hon'ble Delhi HC, the civil court can now exercise its jurisdiction upon matters relating to sections 397 and 398 of the Act where a question of common law is also under dispute. The powers conferred on the civil courts are wide enough so as to enable them to keep a check on such special authorities constituted under a particular statute. Thus the complete exclusion of the civil courts from exercising jurisdiction over matters falling within the jurisdiction of a special authority under a specific statute is a far-fetched possibility which is expected not to be favored by the judiciary for preserving the efficacy of the proper functioning of the judicial and quasi-judicial authorities.ⁱ



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ⁱ <http://www.moneylife.in/article/can-civil-courts-be-completely-barred-from-exclusive-jurisdiction-of-quasi-judicial-authorities/31542.html>