



# Bombay Chamber of Commerce & Industry

PRESIDENT

**BHARAT DOSHI**

*Chairman*

*Mahindra & Mahindra Financial Services Ltd.*

**BY HAND**

October 21, 2009

Shri Ashok Chavan  
Hon'ble Chief Minister of Maharashtra  
Room No.604, 6<sup>th</sup> Floor, Main Building  
Mantralaya  
Madam Cama Road  
Mumbai – 400 032

*Ashok Chavan*  
मुख्य मंत्रालय, मुंबई ४०० ०३२

Hon'ble Minister,

**Sub : Proposed Abolition of Original Side Jurisdiction of Bombay High Court**

**Re : Bombay City Civil Court and Bombay Court of Small Causes  
(Enhancement of Pecuniary Jurisdiction and Amendment) Act, 1986  
("the Act")**

On behalf of the members of Bombay Chamber of Commerce and Industry (Bombay Chamber), we submit this representation regarding the abovementioned Act, which, though assented by the President as far back as in the year 1987, has not yet been brought into effect by the Government of Maharashtra, in view of the submissions of Chambers of Commerce, Associations of legal practitioners and industry representatives about the adverse implications of abolition of the original side jurisdiction of the Bombay High Court, i.e., material and adverse impact on quality and speed of dispensation of justice; reduced tax revenues for the State Government; flight of business and future investments to other parts of the country; flight of talented professionals and skilled and unskilled labour to other parts of the country on account of reduced employment opportunities.

We understand that the Maharashtra State Government is reconsidering enforcement of this Act. Since such a step would adversely impact the quality and the speed of dispensation of justice in the State, thereby resulting in virtual denial of justice to the common man, apart from leading to several other serious repercussions, we reiterate our concerns, as follows :

**Mumbai as the commercial capital of India and an international commercial city :**

Mumbai is the commercial capital of India and is growing day by day in stature. It is one of the international cities for trade, commerce and industries. The growth of trade and commerce also requires high quality mechanism to resolve the commercial disputes. In spite of all the pressures and difficulties which we face in our judicial system, Mumbai is fortunate to have Bombay High Court (Original Side) which through its high caliber judges has made a tremendous contribution to the development of commercial law and resolution of commercial disputes.

Established 1836..., 173 years of service to Trade and Industry



Mumbai is also at a crucial stage of take off as an international commercial city, and the Government is making all efforts to establish the appropriate infrastructure for this purpose. At this crucial juncture it is a setback to learn that the original side civil jurisdiction of the Bombay High Court is sought to be abolished. This jurisdiction of the Bombay High Court is important not merely because of the historic reasons but also from the practical view point. In view of the efficacy of the original side civil jurisdiction of the Bombay High Court, the Delhi High Court established much after India became Republic, was also vested with a similar jurisdiction w.e.f. 31<sup>st</sup> October, 1966. The old High Courts like Calcutta High Court and Madras High Court too continue to exercise the original side civil jurisdiction.

#### **Abolition of original side civil jurisdiction :**

Currently, under the Bombay City Civil Court Act, 1948, the Bombay City Civil Court has the jurisdiction to adjudicate upon matters involving amounts up to Rs. 50,000/-. All matters which involve amounts exceeding Rs. 50,000/- are adjudicated by the Bombay High Court as the court of first instance. The Act proposes to remove the pecuniary limit on the jurisdiction of the Bombay City Civil Court. The consequence of this amendment would be that, in future, all civil proceedings (irrespective of the monetary value thereof) would necessarily have to be filed in the Bombay City Civil Court. Effectively, enforcement of the Act would result in abolition of the original side jurisdiction of the Bombay High Court in civil matters. The above amendment is proposed to apply to all suits and proceedings except those falling within the admiralty, insolvency, testamentary, intestate, company and writ jurisdiction of the Bombay High Court.

#### **Virtual Denial of Justice to Common Man:**

The Hon'ble Bombay High Court, in its judgement of April 29, 1992 in the case of Jamshed N. Guzdar vs. State of Maharashtra (*AIR 1992 Bom 435*), had stayed the notification issued for enforcement of the Act on the ground that the Bombay City Civil Court needed to substantially enhance the justice administration infrastructure in terms of number of judges, support staff, court-rooms, books and other associated facilities before the proposed enforcement of the Act could be considered. In the proceedings relating to the above-referred matter, the Government of Maharashtra had confirmed that the Bombay City Civil Court would need a minimum of 120 judges in order to dispose off all pending and future cases in an efficient manner. The Hon'ble Supreme Court of India, in its judgement of January 11, 2005, had directed continuation of stay on enforcement of the Act and had prohibited the State Government from enforcing the Act until the conditions set out in the Bombay High Court judgement with regard to increase in number of judges and enhancement of associated infrastructure were fulfilled. More than 17 years have passed since the above minimum judge strength was stipulated in the year 1992 and a strength of 120 judges would be insufficient to cater to the significantly increased volume of litigation in today's time and age. Even today, cases filed in the Bombay City Civil Court come-up for hearing after several years and are disposed off, many times, after the life-time of the litigants, due to the sheer magnitude of pending litigation and lack of adequate number of judges and infrastructure. This sorry state of affairs will further accentuate upon enforcement of the Act, resulting in a virtual denial of justice to the common man.

