



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, 6th Floor, Main Building
Mantralaya
Madam Cama Road
Mumbai – 400 032

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मुख्य सचिव
ईवालय, 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. 31st 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.

Adverse impact on quality of dispensation of justice:

After the initiation of economic reforms in the year 1991, India and Maharashtra have attracted huge foreign investments. The entry of foreign corporations in Maharashtra (most of whom are based in Mumbai) has been accompanied by increased complexity in the nature of business transactions as well as the commercial disputes. The issues in litigation in today's age are much more complex to comprehend and adjudicate upon, as compared to 1992. While the capabilities of the judges of the Bombay City Civil Court can never be questioned, the members of Bombay Chamber submit that the judges of the Bombay High Court, on account of their greater experience and expertise in dealing with complex litigation, would be better suited to deal with complex commercial disputes going forward as well.

Further, a majority of the commercial contracts now-a-days provide for arbitration as the mode for dispute resolution. The Bombay High Court has set very high benchmarks in terms of exercising its original side civil jurisdiction to ensure efficient disposal of proceedings seeking interim relief and enforcement of arbitration agreements and arbitral awards. The proposed enforcement of the Act would result in such powers being exercised by District Courts which will not match the expertise, experience and wherewithal of the Bombay High Court in dealing with arbitration and complex commercial/financial matters. As a consequence, there will be an adverse impact on the quality of dispensation of justice especially in relation to commercial litigation, which would be highly detrimental to the legitimate interests of the business community

Flight of business out of Maharashtra:

It may be of significance to note that the State Governments of other metropolitan cities, i.e., Delhi, Kolkatta and Chennai have vested their original side jurisdiction with the respective High Courts for matters beyond certain stipulated pecuniary limits. In view of this, there is a likelihood of many of the foreign collaborators, customers and suppliers insisting on vesting the jurisdiction in respect of commercial contracts (especially where the complexities or financial stakes are high) with the other High Courts, such as, Delhi, Kolkatta and Chennai.

A citizen friendly and robust justice administration system is one of the critical factors considered by global corporations while deciding upon location of their businesses. The members of Bombay Chamber apprehend that, in the event of enforcement of the Act, many of the large foreign and Indian corporates may prefer to shift their place of business out of Mumbai. This would have a significant adverse impact on the legal profession in Mumbai, generation of employment opportunities in private sector and governmental revenues from direct and indirect taxes and court fees from the business activities and litigation conducted in Mumbai. As a result, the State of Maharashtra may lose its long standing status as the most favoured investment destination in India.

Jurisdiction is usually transferred from one court to another for the reasons, (i) the transferee court is location-wise more convenient to litigants, (ii) the system of law followed in the transferee court is more progressive, (iii) the quality of justice dispensation system can be significantly improved by such transfer. In the present case, none of these grounds is available to justify the proposed abolition of original side jurisdiction of the Bombay High Court and vesting it with the Bombay City Civil Court.

Suggestions :

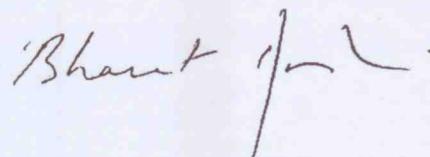
The members of Bombay Chamber understand and appreciate that there is an urgent need to increase the pecuniary limit of jurisdiction of the Bombay City Civil Court in the wake of increase in inflation over the past years and in order to reduce the burden of huge volumes of litigation currently handled by the Bombay High Court so that the expertise and experience of the learned judges of the Bombay High Court can be better utilized in effective and timely disposal of complex & high value litigation.

In the light of the foregoing, we propose that the State Government may favourably consider increasing the limit on pecuniary jurisdiction of the Bombay City Civil Court from Rs. 50,000/- to Rs. 1 One crore.

We trust our suggestions will merit your positive consideration and no hasty steps will be taken, which could lead to sacrificing an important integral time tested judicial dispensation of the Bombay High Court. Our members will be glad to explain our views in the matter to you in person, if so required.

Thanking you,

Yours faithfully,



Bharat Doshi