

PROVINCIAL SMALL CAUSE COURTS ACT, 1887

9 of 1887

[24th February, 1887]

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PROVINCIAL SMALL CAUSE COURTS ACT, 1887

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STATEMENT OF OBJECTS AND REASONS "The suits cognizable in Courts of Small Causes are subject to certain provisos, described in Section 6, Act XI of 1865, as "claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand does not exceed in amount or value the sum of five hundred rupees whether on balance of account or otherwise" and S.586 of the Code of Civil Procedure, 1908 provides that "no second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject matter of the original suit does not exceed five hundred rupees". Since Section 6 of the Act of 1865 was enacted, a vast quantity of case-law has grown up around it, and, as the rulings of the Courts have not been uniform, doubts constantly arise on the question whether a suit is or is not a suit of the nature cognizable by a court of Small Causes, and, consequently, whether or not, where the suit is of value not exceeding five hundred rupees and the original decree made in it was not final but was open to appeal, an appeal will also lie from the appellate decree in the suit. It appears to the Government of India that the conflicting constructions placed on Section 6, of which some are due to the progress of legislation during the last twenty years (ILR 3 All 66), render a more accurate definition necessary of the suits of which Courts of Small Causes may take cognizance, and that legislation to this end should follow section 18 and S.19 of the Presidency Small Cause Courts Act, 1882, in declaring the jurisdiction of those Courts to extend to all suits of a civil nature, subject to specified exceptions. This Bill has accordingly been prepared, its primary object being to remove the doubts now felt as to the effect of Section 6. Act XI of 1865: and, as several sections and parts of sections of that Act have, from time to time, been repealed and other sections are obsolete as regards both expression and utility, it has been considered desirable to

repeal the Act and re-enact the substance of the extant portions of it..... ."-Gazette of India, 1886, Part V, page 8.

CHAPTER 1
PRELIMINARY

1. Title, extent and commencement :-

(1) This Act may be called the Provincial Small Cause Courts Act, 1887.

(2) It extends to ¹[the whole of India except ² [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]]; and

(3) It shall come into force on the first day of July, 1887.

1. Substituted for the words "Provincial Government" by A.L.O., 1950.

2. The words "with the previous sanction of the Governor-General in Council" were repealed by the Decentralization Act, 1914 (4 of 1914), S. 2 and Sch.,Pt. 1.

2. Repeal :-

Repealed partly by the Amending Act, 1891 (12 of 1891), Section 2 and Schedule I, and partly by the Repealing Act, 1938 (I of 1938), Section 2 and Schedule.]

3. Savings :-

Nothing in this Act shall be construed to affect

(a) any proceedings before or after decree in any suit instituted before the commencement of this Act; or

(b) the jurisdiction of a Magistrate under any law for the time being in force with respect to debts or other claims of a civil nature, or of village-munsifs or village-panchayats, under the provisions of the Madras Code, or of village-munsifs under the Dekkhan Agriculturists' Relief Act, 1897 ; or

(c) any local law or any special law other than Code of Civil Procedure, 1908 .

4. Definition :-

In this Act, unless there is something repugnant in the subject or context, "Court of Small Causes" means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court.

5. Establishment of Courts of Small Causes :-

(1) The ¹[State Government] [* * *] may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration beyond the local limits for the time being of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town.

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the "[State Government] may define, and the Court may be held at such place or places within those limits as the ¹ [State Government] may appoint.

1. Substituted for the words "Provincial Government" by A.L.O., 1950.

6. Judge :-

When a Court of Small Causes has been established there shall be appointed, by order in writing, a Judge of the Court : Provided that if the [State Government] so direct, the same person shall be the Judge of more than one such Court.]

7. Appointment of times of sitting in certain circumstances

:-

(1) A Judge who is the Judge of two or more such Courts may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge.

(2) Notice of the times shall be published in such manner as the High Court from time to time directs.

8. Additional Judges :-

¹ [(1) If the State Government so direct, there may be appointed, by order in writing. Additional Judges of a Court of Small Causes or of two or more such Courts.]

(2) [An Additional] Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge.

(3) The Judge may withdraw from [an Additional] Judge any business pending before him.

(4) When the Judge is absent, the [senior] Additional Judge may discharge all or any of the functions of the Judge.

1. Substituted for the words "Provincial Government" by A.L.O., 1950.

9. Suspension and removal of Judges :-

Repealed by A.O., 1937.]

10. Power to require two-Judges to sit as a bench :-

The ¹ [State] Government, after consultation with the High Court, may, by order in writing, direct that two-Judges of Courts of Small Causes or a Judge and an Additional Judge of a Court of Small Causes shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order.

1. Substituted for the words "Provincial Government" by A.L.O., 1950.

11. Decision in case heard by a bench :-

(1) If two-Judges, or a Judge and an Additional Judge, sitting together under the last foregoing section, differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of Code of Civil Procedure, 1908 shall apply to the reference.

(2) If they differ on any matter other than a matter specified in sub-section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then, the opinion of the Judge sitting with him, shall prevail.

(3) For the purposes of sub-section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge.

12. Registrar :-

¹ [1) There may be appointed to a Court of Small Causes an officer to be called the Registrar of the Court.]

(2) Where a Registrar is appointed, he shall be the chief ministerial

officer of the Court.

(3) The [State] Government may, by order in writing, confer upon a Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct. [* * *]

1. Substituted for the words "Provincial Government" by A.L.O., 1950.

13. Other ministerial officers :-

Repealed by A.O., 1937.]

14. Duties of ministerial officers :-

(1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

CHAPTER 3

JURISDICTION OF COURTS OF SMALL CAUSES

15. Cognizable 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 hundred rupees shall be cognizable by a Court of a Small Causes.

(3) Subject as aforesaid, the ¹ [State] Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a

Court of Small Causes mentioned in the order.

1. Substituted by the Small Cause Courts (Attachment of Immovable Property) Act, 1926 (I of 1926), S. 2.

16. Exclusive jurisdiction of Courts of Small Causes :-

Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

CHAPTER 4

PRACTICE AND PROCEDURE

17. Application of the Code of Civil Procedure :-

(1) ¹[The procedure prescribed in Code of Civil Procedure, 1908 , shall, save in so far as is otherwise provided by that Code or by this Act,] be- the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits : Provided that an applicant for an order to set aside a decree passed ex parte or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give ² [such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed]

.

(2) Where a person has become liable as surety under the Proviso to sub-section (1), the security may be realized in manner provided by Section [145] of Code of Civil Procedure, 1908 , [1908].

1. Substituted for the words "the Local Government from appointing" by A.O., 1937.

2. Substituted for the words "Provincial Government" by A.L.O., 1950.

18. Trial of suits by Registrar :-

(1) Suits cognizable by the Registrar under section 12 , sub-sections (3) and (4), shall be tried by him and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits: and execute the decrees, respectively.

(2) The Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding on the file of the Registrar.

19. Admission, return and rejection of complaints by Registrar

:-

(1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may admit a complaint, or return or reject a complaint for any reason for which the Judge might return or reject it.

(2) The Judge may, of his own motion or on the application of a party, return or reject a complaint which has been admitted by the Registrar, or admit a complaint which has been returned or rejected by him : Provided that where a party applies for the return or rejection or the admission of a complaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar admitted, or returned or rejected, the complaint, the Judge shall dismiss the application unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

20. Passing of decrees by Registrar on confession :-

(1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorized in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds and in the same manner as if the decree had been passed by himself.

21. Execution of decrees by Registrar :-

(1) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may, subject to any instructions which he may have received from

the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution. which the Judge might make under this Act.

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (1), or the Additional Judge, in the case of any such decree or order which has been made by himself with respect to which proceedings have not been taken by the Judge under this sub-section, may, of his own motion, or on application made by a party within fifteen days from date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order.

(3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of Limitation Act, 1877, as though the application of the party were an application for review of judgment.

22. Adjournment of cases by chief ministerial officer :-

When the Judge of a Court of Small Causes is absent and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a date for the further hearing thereof.

23. Return of plaints 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 plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of S.578 of the Code of Civil Procedure, 1908 and make such order with respect to costs as it deems just, and the Court shall, for the purposes of 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.

24. Appeal from certain orders of Courts of Small Causes :-

Where an order specified in ¹[clause (ff) or clause (h) of sub-section (1) of S.104 of the Code of Civil Procedure, 1908] is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court ² [on any ground on which an appeal from such order would lie under that section.]

1. Substituted for the words "the Local Government from appointing" by A.O., 1937.

2. Substituted for the words "Provincial Government" by A.L.O., 1950.

25. Revision of decrees and orders of Courts of Small Causes :-

The High Court for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

CHAPTER 5

SUPPLEMENTAL PROVISIONS

28. Subordination of Courts of Small Causes :-

(1) A Court of Small Causes shall be subject to the administrative control of the District Court and to the superintendence of the High Court, and shall

(a) keep such registers, books and, accounts as the High Court from time to time prescribes, and

(b) comply with such requisitions as may be made by the District Court, the High Court or the State Government for records, returns and statements in such form and manner as the authority making the requisition directs.

(2) The relation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the State Government in which the Court of Small Causes is established.

29. Seal :-

A Court of Small Causes shall use a seal of such form and

dimensions as are prescribed by the State Government.

30. Abolition of Courts of Small Causes :-

The State Government may, by order in writing, abolish a Court of Small Causes.

31. Saving of power to appoint Judge of Court of Small Causes to other office :-

(1) Nothing in this Act shall be construed to prevent ¹ [the appointment of] a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court or to be a Magistrate of any class or to hold any other public office.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of this Court shall, subject to any rules which the [State Government] may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

1. Substituted by A.O" 1937.

32. Application of Act of Courts invested with jurisdiction of Court of Small Causes :-

(1) So much of Chapters III and IV as relates to

(a) the nature of the suits cognizable by Courts of Small Causes,

(b) the exclusion of the jurisdiction of other Courts in those suits.

(c) the practice and procedure of Courts of Small Causes,

(d) appeal from certain orders of those Courts and revision of cases decided by them, and

(e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act, applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.

33. Application of Act and Code to Court so invested as to

two Courts :-

A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and Code of Civil Procedure, 1908 , be deemed to be different Courts.

34. Modification of Code as so applied :-

Notwithstanding anything in the last two foregoing sections,

(a) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

(b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes, the documents mentioned in S.224 of the Code of Civil Procedure, 1898 shall not be sent with the decree unless in any case the Court, by order in- writing requires them to be sent.

35. Contingencies of proceedings of abolished Courts :-

(1) Where a Court of Small Causes, or a Court invested with the jurisdiction of a Court of Small Causes, has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit.

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure as extended to Courts of small Causes or in any other enactment for the time being in force.

36. Amendment of Indian Limitation Act :-

¹ Repealed by the Indian Limitation Act, 1908 (9 of 1908).]

1. Substituted by A.O" 1937.

37. Publication of certain orders :-

All orders required by this Act to be made in writing by the ¹ [State] Government shall be published in the Official Gazette.

1. Substituted by A.0" 1937.

CHAPTER 5A
DISTRESSES

27A. Extent of Chapter IV-A and its application :-

The provisions of this Chapter extend to the areas within the local limits of the jurisdiction of a Court of Small Causes : Provided that nothing in this Chapter shall apply

(1) to a Judge or Court, other than a Small Cause Court, invested with the jurisdiction of a Court of Small Causes:

(2) to any rent due to Government;

(3) to any rent which has been due for more than twelve months before the date of the application made under Section 27B ;

(4) to any rent which is in arrears for a period less than three months.

27B. Application for distress warrant :-

(1) Any person claiming to be entitled to arrears of rent of any house or premises to which this Chapter extends situate in the local limits of the jurisdiction of a Court of Small Causes or his duly constituted attorney, may apply to such Court for issuing a warrant under S. 27C : Provided that before making an application such person shall give 15 days' notice to the tenant making a demand of the said arrears.

(2) The application made under sub section (1) shall be supported by an affidavit or affirmation in Form A in the Third Schedule.

27C. Issue of distress warrant :-

The Court of Small Causes may thereupon direct the issue of a warrant in Form B in the Third Schedule returnable within six days, addressed to any one of the bailiffs appointed for the purpose : Provided that the Court may, on personal examination of the person applying for such warrant, decline to issue the same.

27D. Time for distress :-

Every distress under this Chapter shall be made after sunrise and before sunset, and not at any other time.

27E. What places bailiff may force open :-

(1) The bailiff directed to make the distress may force open any stable, outhouse or other building and may also enter any dwelling-house the outer door of which may be open and may break open the door of any room in such dwelling house for the purpose of seizing property liable to be seized .under this Chapter.

(2) Where a room in a dwelling house is in the actual occupancy of a woman, who according to custom, does not appear in public, the bailiff shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution consistent with these provisions, to prevent its clandestine removal.

27F. Property which may be seized :-

In pursuance of a warrant issued under Section 27C , the bailiff shall seize the movable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor) or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress : Provided that the bailiff shall not seize

(a) things in actual use; or

(b) the necessary wearing apparel, cooling vessels, beds and bedding of the debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman; or

(c) tools of artisans, and, where the debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section; or

(d) books of account: or

(e) goods in the custody of the law.

27G. Partial exemption of agricultural produce :-

The State Government may, by general or special order published in the Official Gazette declare that such portion of agricultural produce or of any class of agricultural produce, as may appear to the State Government, to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the debtor and his family, shall, in the case of all agriculturists or any class of agriculturists, be exempted from liability to seizure in pursuance of a warrant issued under Section 27C.

27H. Impounding distress :-

The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

27I. Inventory. Notice of intended appraisement and sale :-

(1) On seizing any property under section 27-F, the bailiff shall make an inventory of such property and shall give a notice in writing in Form C in the Third Schedule to the debtor, or to any other person upon his behalf in or upon the said house or premises.

(2) The bailiff shall, as soon as may be, file in the Court of Small Causes copies of the said inventory made, and notice given, under sub-section (1).

27J. Application to discharge or suspend warrant :-

(1) The debtor or any other person alleging himself to be the owner of any property seized under this Chapter, or the duly constituted attorney of such debtor or other person, may, at any time within fifteen days from such seizure, apply to the Court of Small Causes to discharge or suspend the warrant, or to release a distrained article, and the Court may discharge or suspend such warrant or release such article accordingly upon such terms as it thinks just and may give reasonable time to the debtor to pay the rent due from him : Provided that where the Court is satisfied that there is sufficient cause for extending the period within an application may be made under this sub-section, it may extend the period to such extent as it may consider necessary.

(2) Upon an application made under sub-section (1), the costs attending it and any attending the issue and execution of the warrant shall be in the discretion of the Court, and shall be paid as it directs.

27K. Claim to goods distrained made by a stranger :-

(1) If any claim is made to, or in respect of, any property seized under this Chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Court of Small Causes upon the application of the bailiff, who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

(2) On issuing a summons under sub-section (1), any suit which may have been brought in any other Civil Court in respect of such claim shall be stayed, and such other Court on proof of the issue of such summons and the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

(3) The Court of Small Causes shall adjudicate upon such claim as is referred to in sub-section (2) and make such order between the parties in respect thereof and of the costs of the proceedings as it thinks fit; and such order shall be enforced as if it were an order made in a suit brought in such Court.

(4) The procedure in a Court of Small Causes in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Court.

27L. Power to award compensation to debtor or claimant :-

(1) In any case under Section 27-J or Section 27K, the Court of Small Causes may award such compensation by way of damages to the applicant or claimant, as the case may be, as the Court thinks fit and may for that purpose make any inquiry it thinks necessary.

(2) The order of the Court awarding or refusing compensation under sub-section (1) shall bar any suit for the recovery of compensation for any damage caused by the distress.

27M. Power to transfer to District Court cases where subject-matter in dispute exceeds the pecuniary Jurisdiction of Court of Small Causes :-

(1) In any case under Section 27J or Section 27K, if the value of the subject matter in dispute exceeds the limits of the pecuniary jurisdiction of the Court of Small Causes, the applicant or claimant may apply to the District Court to transfer the case to itself, and the District Court, on being satisfied that it is expedient that the

case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by the Court of Small Causes and may make such order therein as the District Court thinks fit.

(2) Every application under sub-section (1) shall be made within seven days from the date of the seizure of the subject-matter in dispute.

(3) In granting applications under sub-section (1), the District Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

(4) The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the District Court in the exercise of its original civil jurisdiction: and orders made under this section may be executed as if they were made in the exercise of such jurisdiction. Every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

27N. Appraisalment and notice of sale :-

(1) In default of any order to the contrary by the Court of Small Causes or by the District Court, the Nazir of the Court appointed for the purpose may, at the expiration of fifteen days from a seizure of property under this Chapter, or, as the case may be, of the extended period under the proviso to sub-section (1) of Section 27-J, appraise the property so seized, and give the debtor notice in writing in Form D of the Third Schedule.

(2) The Nazir shall file in the Court of Small Causes a copy of every notice given under sub-section (1).

27O. Sale Application of proceeds :-

In default of any such order to the contrary, the distrained property shall be sold by an officer of the Court on the day mentioned in the notice given under Section 27-N and the officer aforesaid shall, on realising the proceeds, pay over the amount thereof to the Court; and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor: Provided that when the property seized is subject to speedy and natural decay, it may, under special order of the Court, be sold at any time after it is

seized : Provided further that the debtor may direct that the sale shall take place in other manner, first giving security for any extra costs thereby occasioned.

27P. Costs of distresses :-

No costs of any distress under this Chapter shall be taken or demanded except those mentioned in Form E of the Third Schedule.

27Q. Account of costs and proceeds :-

The Court of Small Causes shall cause to be kept a book in which all sums received as costs upon distresses made under this Chapter, and all sums paid as remuneration to the bailiffs, and all contingent charges incurred in respect of such distress, shall be duly entered. It shall also cause to be entered in the book all sums realised by sale of the property distrained and paid over to landlords under the provisions of this Chapter.

27R. Bar of distresses except under this Chapter, and penalty for making illegal distresses :-

No distress shall be levied for arrears of rent except under the provisions of this Chapter; and any person, except a bailiff, a Nazir or an officer of the Court, levying or attempting to levy any such distress shall, on conviction, be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings."-Born. Act 87 of 1958, S. 7 (15-10-1958) : Act 11 of 1960, S. 5.

CHAPTER 5A1

RECOVERY OF POSSESSION OF CERTAIN IMMOVABLE PROPERTY AND CERTAIN LICENCE FEES AND RENT

26. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent. except those to which other Acts apply, to lie in Court of Small Causes :-

(1) Notwithstanding anything contained elsewhere in this Act, but subject to the provision of sub-section (2). the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery

of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of licence fee or charges or rent thereof, to which the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 . Bombay Government Premises (Eviction) Act, 1955 . Bombay Provincial Municipal Corporations Act, 1919 or Maharashtra Housing and Area Development Act, 1976 , or any law for the time being in force, apply.

26A. Appeal :-

(1) An appeal shall lie, from a decree or order made by the Court of Small Causes exercising jurisdiction under Section 26 , to the District Court.

(2) Every appeal under sub-section (1) shall be made within thirty days from the date of the decree or order, as the case may be: Provided that, in computing the period of limitation prescribed by this sub-section, the provisions contained in Sections 4 , S.5 of the Limitation Act 1963 and S.12 of the Limitation Act 1963 of Limitation Act, 1963 , shall, so far as may be, apply.

(3) No further appeal shall lie against any decision in appeal under sub-sec. (1).

(4) The District Court may, for the purpose of satisfying itself that a decree or order made in any case decided by the Court of Small Causes was according to law, call for the case in which such decree or order was made and pass such order with respect thereto as it thinks fit.

26B. Saving of suits involving title :-

Nothing contained in this Chapter shall be deemed to bar a party to a suit, appeal or proceeding mentioned therein in which a question of title to any immovable property arises and is determined. from suing in a competent Court to establish his title to such property.

26C. Saving of pending proceedings :-

Notwithstanding anything contained in Section 16 . all suits and other proceedings cognizable by the Court of Small Causes under this Chapter and pending in the District Court or the Court of any Civil Judge on the date of coming into force of the Provincial Small

Cause Courts and Presidency Small Cause Courts (Maharashtra Amendment) Act, 1984, shall be continued and disposed of by the District Court or the Court of the Civil Judge, as the case may be, as if this Chapter had not been enacted."-Mah. Act 24 of 1984, Ss. 2 and 3(1-1-1985).

26D. Amendment of the second schedule to the Code of Civil Procedure :-

Repealed by the Presidency Small Cause Courts Law Amendment Act, 1888 (10 of 1888), S.4.]

27. Finality of decrees and orders :-

Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final.

SCHEDULE 1

THE SCHEDULE

- Enactments repealed. [Repealed by the Amending Act. 1891 (12 of 1891). Section 2 and Schedule 1.]

SCHEDULE 2

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES

(See section 15) (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 judgement 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 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. STATE AMENDMENTS Gujarat: Same as that of Maharashtra-Act II of 1960, Section 17 and Guj.A.L. 0. 1960. The Act ceases to apply to the City of Ahmedabad with effect from 4-11-1961-See G.L.J. Act 19 of 1961, Section 19. Maharashtra: In its application to the State of Maharashtra, delete Cl. (4).-Mah. Act 24 of 1984, S. 5(1-1-85) prior to deletion after the words "such property", following was inserted,- "but not including a suit for ejectment where- (a) the property has been let under a lease by a written instrument or orally and (b) the Court of Small Causes would be competent to take cognizance of a suit for the rent of the property, and (c) the only substantial issue arising for decision is as to whether the lease has been determined by efflux of the time limited thereby or has been determined by a notice in accordance with clause (h) of Section 111 of the Transfer of Property Act, 1882."- Born. Act 6 of 1930, Section 3 (I) (9-5-1930); Act 9 of 1932, Section 2(10-11-1932) read with Act 87 of 1958, Section 2 (15-10-1958) : Act 11 of 1960, Section 3. Uttar Pradesh: For Article (4), substitute the following :- "(4) a suit for the possession of immovable 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."-U.P. Act 37 of 1972, Section 4 (20-9-1972). (5) a suit for the partition of immovable property: (6) a suit by a mortgagee of immovable property or by a mortgagor of immovable property for (he redemption) (7) a suit for the assessment, enactment, abatement (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: STATE AMENDMENTS Maharashtra: In its application to the State of Maharashtra, delete Cl. (8).-Mah. Act 24 of 1984, S. 5 (1-1-85). Uttar Pradesh: In its application to the State of Uttar Pradesh, in Schedule II omit Art. (8).-U. P. Act 24 of 1954. Section 2 and Schedule, Item 3 (I) (30-11-1954). (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 possession of an hereditary office or of an interest in such an office, including a suit to establish and exclusive or periodically recurring right to discharge the functions of an office; (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; , STATE AMENDMENT Maharashtra: In Cl. 13, after the words "other religious institution" insert the words "but not including any such suit where the right is based on a contract reduced to writing."-Mah. Act 24 of 1984, S. 5 (1-1-85). (14) a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act, 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; STATE AMENDMENTS Gujarat : Same as that of Maharashtra.-Act I of 1960, Section 87 and Guj. A.L.O., 1960. The Act, however, ceases to apply to the City of Ahmedabad with effect from 4-11-1961-See Guj. Act 19 of 1961. Section 19. Maharashtra: In-its application to the State of Maharashtra, in clause (18) of Schedule II, for the words "relating to a trust". substitute the words "to enforce a trust".-Born. Act 6 of 1930, Section 3 (2) (9-5-1930) read with Act 87 of 1958. Section 2 (15-10-1959): Act II of 1960, Section 3. (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: STATE AMENDMENTS Gujarat: Same as that of Maharashtra.-Act 11 of 1960, Section 87 and Guj. A.L.O. 1960. The Act, however, ceases to apply to the City of Ahmedabad with effect from 4-11-1961- See Guj. Act 19 of 1961, Section 19. Maharashtra: In its application to the State of Maharashtra, in clause (20) of Schedule II, after the words "Code of Civil Procedure" add the words "in respect of any immovable property".-Born. Act 6 of 1930, Section 3 (3) (9-5-1930) read with Act 87 of 1958, Section 2 (15-10-1958) : Act 11 of 1960, Section 3. (21) a suit to set aside an attachment by a Court or a revenue authority, or a sale, mortgage, lease or other transfer by

a Court or a revenue-authority or by a guardian; STATE AMENDMENTS Gujarat: Same as that of Maharashtra.-Act 11 of 1960. Section 87 and Guj. A.L.O., 1960. The Act, however, ceases to apply to the City of Ahmedabad with effect from 4-11-1961- See Guj Act 19 of 1961, Section 19. Maharashtra: In its application to the State of Maharashtra, in clause (21) of Schedule II- (a) after the word 'attachment' add the words "of any immovable property"; (b) after the word 'transfer', add the words "of any such property".-Born. Act 6 of 1930, Section 3 (4) (9-5-1930) read with Act 87 of 1958, Section 2 (15-10-1958): Act II of 1960, Section 3. (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 or upon a judgment obtained in [India]; STATE AMENDMENTS Maharashtra: In its application to the State of Maharashtra, omits clauses 25 and 26.-Mah. Act 24 of 1984, S. 5 (1-1-1985). Uttar Pradesh: In its application to the State of Uttar Pradesh, in Schedule II, omit Art. (26).-U. P. Act 24 of 1954, Section 2 and Schedule, Item 3 (1) (30-11-1954). (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-transaction; 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; STATE AMENDMENTS Gujarat: Same as that of Maharashtra.-Act II of 1960, section 67 and Guj. A.L.O., 1960. The Act, however, ceases to apply to the City of Ahmedabad with effect from 4-11-1961-See Guj. Act 19 of 1961. section 19. Maharashtra: In its application to the State of Maharashtra, in clause (31) of Schedule II, for the words "and a suit for the profits on immovable property belonging to the plaintiff which have been wrongfully received by (he defendant", substitute the words "but not included a suit for mesne profits".-Born. Act 6 of 1930, Section 3 (5) (9-5-1930) read with Act 87 of 1958, section 2 (15-10-1958): Act I I of 1960, Section 3. (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; STATE AMENDMENT Uttar Pradesh: In its application to the State of Uttar Pradesh, in Schedule II, omit Art. 34.-U. P. Act 24 of 1954. section 2 and (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; (ii) for an act which is, or, save for the provisions of Chapter IV of the Indian Penal Code, would be. an offence punishable under chapter XVII of the said Code;] {iii) 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 Code of Civil Procedure or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV of that Code; or STATE AMENDMENT Uttar Pradesh: In its application to the State of Uttar Pradesh, in Schedule II, omit sub-clause (ii) of Art. 35.-U.P. Act 24 of 1954, section 2 and Schedule, Item.3 (1) (30-11-1954). (36) a suit by a Muhammadan for exigible (muajjal) or deterred (mu'wajjal) dower; (37) a suit for restitution of conjugal rights [* * *] for the custody of a minor or for a divorce: (38) a suit relating to maintenance: STATE AMENDMENTS Maharashtra: In its application to the State of Maharashtra in Cl. 38 after the words "relating to maintenance" add the words "but not including any suit where the rights is based on a contract reduced in writing."-Mah. Act 24 of 1984, S. 5 (1-1-1985). Uttar Pradesh: In its application to the State of Uttar Pradesh, in Schedule II, for Art. (38), substitute the following, namely :- "(38) a suit relating to maintenance but not being a suit for recovery of arrears of maintenance based upon a decree or written arrangement."-U. P. Act 24 of 1954, section 2 and Schedule, Item 3 (2) (30-11-1954). (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 owners 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; [(43-A) a suit to recover property obtained by an act which is, or, save for the provisions of Chapter IV of the Indian Penal Code, would be, an offence punishable under Chapter XVII of the said Code: STATE AMENDMENT Uttar Pradesh: In its application to the State of Uttar Pradesh, in Schedule II, omit Art. (43-A)-U.P. Act 24 of 1954, section 2 and Schedule, item 3 (1) (30-11-1954). (44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force. STATE AMENDMENTS Gujarat: Same as that of Maharashtra-Act I I of 1960, section 87 and Guj. A.L.O.. 1960. The Act ceases to apply to the City of Ahmedabad with effect from 4-11-1961-Guj. Act 19 of 1961. section 19. Maharashtra: In its application to the State of Maharashtra, after the Second Schedule, insert the following Schedule, namely.--

SCHEDULE 3