

The Code of Civil Procedure (Madhya Pradesh Amendment) Act, 1984

MADHYA PRADESH

India

The Code of Civil Procedure (Madhya Pradesh Amendment) Act, 1984

Act 29 of 1984

- Published on 14 August 1984
- Commenced on 14 August 1984
- [This is the version of this document from 14 August 1984.]
- [Note: The original publication document is not available and this content could not be verified.]

The Code of Civil Procedure (Madhya Pradesh Amendment) Act, 1984M.P. Act No. 29 of 1984Statement of Objects and Reasons. - In order to relieve the already over burdened High Court from the flood of revision petitions and with view to provide a cheaper and on the spot remedy to a poor litigant and on the analogy of the revisional powers enjoyed by the Sessions Judges in the district it is proposed to confer similar revisional jurisdiction on the District Judges with respect to revision petitions arising from the original civil suits pending in the Subordinate Courts and valued upto Rs. 20,000 only, as has been conferred by the local amendments in the State of Uttar Pradesh.2. Transfer, promotion, retirement etc. are the normal incidence of Government service. Executive Government has, under the law, exclusive authority in the matter of exercise of such powers provided the exercise of power is bona fide. Similar is the position in case of an employer and employee of the Government controlled or owned companies and corporations.3. Several instances have come to the notice of the State Government that employees institute suits for permanent injunction, lightly alleging malice or mala fides on the part of Government only with a view to clothe the Courts with the jurisdiction to interfere. In most cases, it has been seen that the facts alleged in support of "malice" or "mala fides" are baseless or concocted. It is generally prayed that Government be restrained from transferring, retiring or taking disciplinary action etc. Many, such employees have applied for and obtained temporary injunctions. Such employees armed with injunction under resort to delaying tactics, misuse the opportunity causing dislocation of work, and thereby encourage indiscipline amongst other employees as well. This brings the administrative machinery to a halt. If effective intervention is not made by amendment of law, the ultimate sufferer would be the public in general. Hence certain restrictions are sought to be introduced in this respect.4. Often the defaulters do not pay Government dues and institutes suits for permanent injunction many times inspite of finality attached to order declaring their pecuniary liability for payment of taxes and other dues. They succeed in obtaining temporary injunctions and prolong the suits which are ultimately dismissed. But in the meantime, by taking resort to such means, they

contrive to retain Government money and make unrighteous gains out of it. The Government money is thus unnecessarily blocked up, causing loss to public exchequer. Hence provision is made for giving bank guarantee by such persons.⁵ In local bodies like Municipal Corporations, Municipalities, Janapads, Gram-Panchayats and also in Co-operative Societies, elections are held periodically. Instances are soon where disgruntled candidates rush to law Courts and seek temporary injunctions staying the entire election process. In order to arrest tendency on the part of mischievous elements of resorting to civil suits with a view to obtain temporary injunction and arrest the election process, legislative interference appears to be necessary for the health of democracy.⁶ The Government of Uttar Pradesh has amended the Code of Civil Procedure, 1908 in its application to that State by Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1976 (U.P. Act 57 of 1976) inserting a proviso in sub-rule (2) of Rule 2 of Order XXXIX to the effect that no temporary injunctions could be granted inter alia in the aforesaid type of cases. Similar amendment in Civil Procedure Code is proposed in our State as well.⁷ It is again a malady that collusive civil litigation for circumventing the provisions of Ceiling Act and devised prolongation of litigation in the Civil Courts for making its provisions ineffective, are rampant and many times not being a party, the Government is neither aware of civil proceedings nor can do anything to abate the mischief and misuse of the process of the Court, hence it is proposed that in such case State Government should necessarily be made a party so that by such collusive litigation the public interests do not suffer. With that end in view amendments in Section 80, Order I, Rule 3, Order VI, Rule 4 and Order IX, Rule 1, of the Code of Civil Procedure have been proposed.⁸ Hence this Bill.[Dated 14th August, 1984]Received the assent of the President on the 31st July, 1984; assent first,published in the "Madhya Pradesh Gazette" (Extraordinary) dated the 14th August, 1984.An Act further to amend the Code of Civil Procedure, 1908, in its application to the State of Madhya Pradesh.Be it enacted by the Madhya Pradesh Legislature in the Thirty-fifth year of the Republic of India as follows :-

1. Short title.

- This Act may be called The Code of Civil Procedure (Madhya Pradesh Amendment) Act, 1984.

2. Amendment of Central Act V of 1908 in its application to the State of Madhya Pradesh.

- The Code of Civil Procedure, 1908 (V of 1908) (hereinafter referred to as the principal Act) in its application to the State of Madhya Pradesh be amended in the manner hereinafter provided.

3. Amendment of Section 80.

- In Section 80 of the Principal Act,-(i)in sub-section (1) for the words, brackets and figures "sub-section (2)", the words, brackets and figures "sub-section (2) or sub-section (4)" shall be substituted;(ii)after sub-section (3), the following sub-section shall be inserted, namely;-(4) Where in a suit or proceeding referred to in Rule 3-B of Order I, the State is joined as a defendant or non-applicant or where the Court orders joinder of the State as defendant or non-applicant in exercise of powers under sub-rule (2) of Rule 10 of Order I such suit or proceeding shall not be

dismissed by reason of omission of the plaintiff or application to issue notice under sub-section (1)";

4. Substitution of Section 115.

- For Section 115 of the Principal Act, the following section shall be substituted namely :-"115. Revision. - The High Court, in cases arising out of original suits or other proceedings of the value of twenty thousand rupees and above, and the District Judge in any other case may call for the record of any case which has been decided by any Court subordinate to such High Court or District Judge, as the case may be, and in which no appeal lies thereto, and if such subordinate Court appears-(a)to have exercised a jurisdiction not vested in it by law; or(b)to have failed to exercise a jurisdiction so vested; or(c)to have acted in the exercise of its jurisdiction illegally or with material irregularity;the High Court or the District Judge, as the case may be, make such order in the case as it thinks fit:Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Judge, the High Court alone shall be competent to make an order under this section :Provided further that the High Court or the District Judge shall not, under this section, vary or reverse any order including an order deciding an issue, made in the course of a suit or other proceedings, except where,-(i)the order, if so varied or reversed, would finally dispose of the suit or other proceeding; or(ii)the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.Explanation. - In this section, the expression "any case which has been decided" includes any order deciding an issue in the course of a suit or other proceeding."

5. Amendment of Order I of First Schedule.

- In Order I of First Schedule to the Principal Act after Rule 3-A, the following Rule shall be inserted, namely :-"3-B. Conditions for entertainment of suits. - (1) No suit or proceeding for,-(a)declaration of title or any right over any agricultural land, with or without any other relief, or(b)specific performance of any contract for transfer of any agricultural land, with or without any other relief,shall be entertained by any Court, unless the plaintiff or applicant, as the case may be, knowing or having reason to believe that return under Section 9 of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (No. 20 of 1960) in relation to land aforesaid-has been or is required to be filed by him or by any other person before competent authority appointed under that Act, has impleaded the State of Madhya Pradesh as one of the defendants or non-applicants, as the case may be, to such suit or proceeding.(2)No Court shall proceed with pending suit or proceeding referred to in sub-rule (1) unless, as soon as may be, the State Government is so impleaded as a defendant or non-applicant.Explanation. - The expression "suit or proceeding" used in this sub-rule shall include appeal, reference or revision, but shall not include any proceeding for or connected with execution of any decree or final order passed in such suit or proceeding".

6. Amendment of Order VI of the First Schedule.

- In Order VI of the First Schedule to the Principal Act, after Rule 4, the following rule shall be inserted, namely :-"4-A. Particulars of pleadings for agricultural land. - In any suit or proceeding contemplated under Rule 3-B of Order I, the parties, other than the State Government shall plead

the particulars of total agricultural land which is owned, claimed or held by them in any right and shall further declare whether the subject-matter of suit or proceeding is or is not covered by Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (No. 20 of 1960) and whether any proceedings in relation to such subject matter are to the knowledge of the party pending before the competent authority."

7. Amendment of Order XIX of the First Schedule.

- In Order XIX of the First Schedule to the Principal Act, after Rule 1, the following rule shall be inserted, namely :-"1-A. Proof of fact by affidavit in certain cases. - Notwithstanding anything to the contrary in Rule 1, the Court shall, in a suit or proceeding referred to in Rule 3-B of Order I and whether or not any proceeding under the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (No. 20 of 1960) are pending before the competent authority appointed under that Act, call upon the parties to prove any particular fact or facts as it may direct, by affidavit, unless the Court looking to the nature and complexity of the suit or proceeding and for reasons to be recorded in writing deems it just and expedient to dispense with the proof of a fact or facts by affidavits."

8. Amendment of Order XXXIX of the First Schedule.

- In Order XXXIX of the First Schedule to the Principal Act,-(a)in Rule 2, in sub-rule (2), the following proviso shall be inserted, namely :-"Provided that no such injunction shall be granted-(a)where no perpetual injunction could be granted in view of the provisions of Section. 38 and Section 41 of the Specific Relief Act, 1963 (No. 47 of 1963); or(b)to stay the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from, any person appointed to public service and post in connection with the affairs of the State including any employee of any company or corporation owned or controlled by the State Government; or(c)to stay, any disciplinary proceeding pending or intended or, the effect of any adverse entry against any person appointed to public service and post in connection with the affairs of the State including any employee of the company owned or controlled by the State Government; or(d)to restrain any election; or(e)to restrain any auction intended to be made or, to restrain the effect of any auction made by the Government; or to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished;and any order for injunction granted in contravention of these provisions shall be void."(b)In Rule 4-(i)after the words "by the Court", the words "for reasons to be recorded, either on its own motion or" shall be inserted;(ii)at the end, the following proviso shall be inserted, namely;-"Provided also that if at any stage of the suit it appears to the Court that the party in whose favour the order of injunction exists is delaying the proceedings or is otherwise abusing the process of Court, it shall set aside the order for injunction."