

The Civil Courts Act, 1977

JAMMU & KASHMIR

India

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Act 46 of 1977

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The Civil Courts Act, 1977 Act No. 46 of 1977 [Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 read with State Council Resolution No. 1, dated 8th April, 1925. (Notification No. 14-L/81 and published in the Government Gazette dated 16th Chet, 1977)].

1. Short title, extent and commencement.

(1) This Act may be called the Jammu and Kashmir State Civil Courts Act, 1977. (2) It extends to the whole of Jammu and Kashmir State. It shall come into force on the 1st day of Baisakh, 1978.

2. Definitions.

- In this Act, unless there is something repugnant in the subject or context, -(i) "small cause" means a suit of the nature cognizable by a Court of small causes under the Small Cause Courts Act; (ii) "value" used with reference to a suit means the amount or value of the subject matter of the suit.

3. The High Court.

- There shall continue to be a High Court for the Jammu and Kashmir State.

4. Civil appellate jurisdiction.

- The High Court shall be deemed for the purposes of all enactments for the time being in force to be the highest Civil Court of appeal or revision. [* * *] [Words 'subject to the control of. and the judicial power exercised by His Highness the Maharaja Sahib Bahadur' deleted by Notification No. 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.]

5. Rules for work in High Court.

- The High Court shall make rules for the transaction of the work of the High Court.

6. Ministerial officers.

(1)The High Court shall have a Registrar and shall have the power to appoint such ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act.(2)The Registrar and the ministerial officers appointed under this section shall exercise such powers and discharge such duties of non-judicial or quasi-judicial nature as the High Court may direct.(3)Any ministerial officer may be suspended or dismissed from his office by order of the High Court.

7. Superintendence and control of subordinate Courts.

(1)The general superintendence and control over all other Civil Courts shall be vested in, and all such Courts shall be subordinate to, the High Court.(2)The High Court shall from time to time visit and inspect the proceeding of the Courts subordinate to the High Court and shall give such directions in matters not provided for by law as may be necessary to secure the due administration of justice.

8. Power to make rules.

(1)The High Court may make rules consistent with this Act and any other enactments for the time being in force -(a)providing for the translation of any papers filed in the High Court and copying and printing any such papers or translations, and requiring from the persons at whose instance or on whose behalf they are filed payment of the expenses thereby incurred ;(b)declaring what persons shall be permitted to practise as petition-writers in the Courts of the State, regulating the conduct of business by persons so practising, and determining the authority by which breaches of rules under this clause shall be tried ;(c)determining in what cases legal practitioners shall be permitted to address the Court in English ;(d)prescribing forms for seals to be sued by those Courts ;(e)regulating the procedure in cases where any person is entitled to inspect a record of any such Court or obtain a copy of the same, and prescribing the fees payable by such persons, for searches, inspections and copies ;(f)conferring and imposing on the ministerial officers of the subordinate Courts such powers and duties of a non-judicial or quasi-judicial nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed ;(g)prescribing forms for such books, entries, statistics and accounts as it thinks necessary to be kept, made or compiled in those Courts or submitted to any authority ;(h)providing for the inspection of those Courts and the supervision of the working thereof;(i)regulating the exercise of the control vested in the High Court by section 35(4) of this Act; and(j)regulating all such matters as it may think fit, with a view to promoting the efficiency of the judicial and ministerial officers of those Courts, and maintaining proper discipline among these officers.(2)Whoever breaks any rule made under clause (b) shall be punished with a fine which may extend to fifty rupees.

9. Registers, books, accounts and statements to be kept and furnished by High Court.

(1)The High Court shall keep such registers, books and accounts as may be necessary for the transaction of the business of the Court.(2)The High Court shall comply with such requisitions as may be made by [the Government] [Substituted by Act X of 1996 for 'His Highness'.] for certified copies of, or extracts from records of the Court and the Courts subordinate thereto.

10. Procedure of High Court in exercise of Civil jurisdiction.

(1)The High Court, when sitting as a Court of Civil Judicature, shall take evidence and record judgements and orders in such manner as it, by rule, directs, and may frame forms for any proceeding in the Courts in the exercise of its civil jurisdiction.(2)[Repealed.] [Section 10(2) repealed by Notification No. 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.]

11. Extraordinary original jurisdiction of High Court.

- The High Court has and shall have power to remove and to try and determine as a Court of extraordinary original jurisdiction any suit being or falling within the jurisdiction of any Court subject to its superintendence when the High Court shall think proper to do so, either on the agreement of the parties to that effect or for purposes of justice.

12. Probate jurisdiction of High Court.

- The High Court shall have such power and authority in relation to the granting of probates of last wills and testaments and letters of administration of the goods, chattels, credits and all other effects whatsoever of persons dying intestate whether within or without the State as are or may be conferred on it by any law for the time being in force.

13. Classes of Courts.

- Besides the High Court, the Courts of Small Causes established under the Small Cause Court Act, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely :-(1)the Court of the District Judge, also called the District Court(2)the Court of the Additional Judge ;(3)the Court of the Subordinate Judge ; and(4)the Court of the Munsiff.

14. Civil Districts.

(1)For the purposes of this Act [the Government] [Substituted by Act X of 1996 for 'His Highness'.] shall divide the territories of the State into civil districts.(2)[The Government] [Substituted by Act X of 1996 for 'His Highness'.] may [on the recommendation of the High Court] [Inserted by Notification No. 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] alter the

limits or the number of these districts.

15. [District Judges. [Section 15 substituted by Act XIV of 2002. (For earlier amendments see Act X of 1996, Act XI of 2000 and Notification No. 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.)]

- The Government shall on the recommendation of the High Court appoint as many persons as the Government think necessary to be District Judges and shall post one such person to each district as District Judge of that District: Provided that the same person may, if the Government on the recommendation of the High Court think fit, be appointed to be District Judge of two or more districts],

16. Additional Judges.

(1) When the business pending before any District Judge requires the aid of an additional Judge or Judges for its speedy disposal, [the Government] [Substituted by Act XIV of 2000 for 'His Highness'. (For earlier amendments see Act X of 1996 and Act XI of 2000).] may [on the recommendations of the High Court] [Inserted by Notification No. 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] appoint such Additional Judge or Judges as may be necessary. (2) An Additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions he shall exercise the same powers as the District Judge.

17. [Subordinate Judges. [Section 17 substituted by Act XIV of 2002. (For earlier amendments see and Notification No. 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985, Act X of 1996 and Act XI of 2000).]

- The Government may after consultation with the High Court fix the number of Subordinate Judges to be appointed and when there is a vacancy in that number, may appoint such person as is recommended by the High Court to the said vacancy.]

18. [Munsiffs. [Section 18(1) substituted *ibid.*]

(1) The Government may after consultation with the High Court fix the number of Munsiffs to be appointed and, when there is a vacancy in that number, may, subject to rules, if any, made under sub-section (3), appoint such person as is recommended by the High Court to the said vacancy. (2) Whenever the business pending before a Munsiff requires the aid of an additional Munsiff for its speedy disposal, the High Court may with the previous sanction of [the Government] [Substituted by Act X of 1996 for 'His Highness'.], appoint an Additional Munsiff and such Munsiff shall discharge any of the functions which the Munsiff with the approval of the District Judge may assign to him and in the exercise of these functions he shall exercise all the powers of the

Munsiff.(3)The High Court may, with the previous sanction of [the Government] [Substituted by Act XIV of 2002 for 'His Highness'. (For earlier amendments see Act, X of 1996, Act XI of 2000.), make rules as to the qualifications of persons to be appointed Munsiffs.

19. District Court to be principal Civil Court of original jurisdiction.

- The Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district.

20. Original jurisdiction of District Judge in suits.

- Except as otherwise provided by any enactment for the time being in force, the Court of the District Judge shall have jurisdiction in original civil suits without limit as regards the value.

21. Pecuniary limits of jurisdiction of Subordinate Judges and Munsiffs.

(1)The jurisdiction to be exercised in original civil suits as regards the value by any person appointed to be a Subordinate Judge, or Munsiff, shall, [be determined, by the High Court] [In section 21(1) as amended by 6-L/82 words 'be determined by the High Court' and 'its' substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] either by including him in a class or grade, or otherwise as [it] [In section 21(1) as amended by 6-L/82 words 'be determined by the High Court' and 'it' substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] thinks fit.(2)The jurisdiction in the case of a Subordinate Judge may be without limit, but in the case of a Munsiff shall not extend to suits the value of which exceeds [fifteen] [Substituted by Act VII of 1997 (section 2).] thousand rupees :Provided that [* * *] [In section 21(2) proviso words 'His Highness may on the recommendation of' omitted and 'may' inserted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] the High Court [may] [In section 21(2) proviso words 'His Highness may on the recommendation of' omitted and 'may' inserted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] direct by notification in the Government Gazette with respect to any Munsiff named therein that his jurisdiction shall extend to suits of such value not exceeding [Twenty-five thousand rupees] [Substituted by Act No. VII of 1997.] as may be specified in the notification.

22. [Local limits of jurisdiction. [Section 22 recast by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.]

(1)The local limits of the jurisdiction of a Subordinate Judge or Munsiff shall be such as the High Court may define.(2)When the High Court posts a Subordinate Judge or a Munsiff to a district the local limits of the district shall, in the absence of any directions to the contrary, be deemed to be the local limits of his jurisdiction.]

23. [Special Judges. [Section 23 inserted by Act XIV of 2002. (For earlier amendments see Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985, Act X of 1996, Act XI of 2000).]

- The Government, after consultation with the High Court, appoint any person to be an Honorary Subordinate Judge or Honorary Munsiff and the High Court may confer on any such person all or any of the powers conferable under this Act on a Subordinate Judge or Munsiff with respect to particular classes of suits or with respect to suits generally in any local area.]

24. Power to invest Subordinate Judge and Munsiff with Small Cause Court jurisdiction and Small Cause Court Judge with ordinary jurisdiction.

(1)[The High Court] [In sub-section (1) and (2) of section 24 for the words 'His Highness', the words 'the High Court', the words 'as he thinks fit', the words 'as it thinks fit' and for the word 'cases', the word 'suits' wherever used substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] may, by notification in the Government Gazette confer, within such local limits [as it thinks fit,] [In sub-section (1) and (2) of section 24 for the words 'His Highness', the words 'the High Court', the words 'as he thinks fit', the words 'as it thinks fit' and for the word 'cases', the word 'suits' wherever used substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] upon any Subordinate Judge or Munsiff, the jurisdiction of a Judge of the Court of Small Causes under the Small Cause Court Act for the trial of suits cognizable by such Courts, up to such value not exceeding five hundred rupees in the case of a Subordinate Judge or two hundred and fifty rupees in the case of a Munsiff, [as it thinks fit,] [In sub-section (1) and (2) of section 24 for the words 'His Highness', the words 'the High Court', the words 'as he thinks fit', the words 'as it thinks fit' and for the word 'cases', the word 'suits' wherever used substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] and may withdraw any jurisdiction so conferred.(2)[The High Court] [In sub-section (1) and (2) of section 24 for the words 'His Highness', the words 'the High Court', the words 'as he thinks fit', the words 'as it thinks fit' and for the word 'cases', the word 'suits' wherever used substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] may, by notification in the Government Gazette, confer within such local limits [as it thinks fit] [In sub-section (1) and (2) of section 24 for the words 'His Highness', the words 'the High Court', the words 'as he thinks fit', the words 'as it thinks fit' and for the word 'cases', the word 'suits' wherever used substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] on any Judge in charge of a Court of Small Causes all or any of the powers conferable on a Subordinate Judge or a Munsiff with respect to particular classes of [suits] [In sub-section (1) and (2) of section 24 for the words 'His Highness', the words 'the High Court', the words 'as he thinks fit', the words 'as it thinks fit' and for the word 'cases', the word 'suits' wherever used substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] or with respect to [suits] [In sub-section (1) and (2) of section 24 for the words 'His Highness', the words 'the High Court', the words 'as he thinks fit', the words 'as it thinks fit' and for the word 'cases', the word 'suits' wherever used substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] generally in any local area.

25. Exercise by Subordinate Judge of jurisdiction of District Court in certain proceedings.

(1)The High Court may by general or special order authorise any Subordinate Judge to take cognisance of, or any District Judge to transfer to a Subordinate Judge under his control, any of the proceedings thereinafter mentioned or any class of those proceedings specified in such order.(2)The proceedings referred to in sub-section (1) are the following, namely -(a)proceedings under the Probate and Administration Act which cannot be disposed of by District Delegates ; and references by Collectors under the fifth paragraph of the Third Schedule of the Code of Civil Procedure;(b)proceedings under the Guardian and Wards Act.(3)The District Judge may withdraw any such proceedings taken cognisance of by or transferred to a Subordinate Judge and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.(4)Proceedings taken cognisance of by or transferred to a Subordinate Judge, as the case may be, under this section shall be disposed of by him, subject to the rules applicable to like proceedings when disposed of by the District Judge.

26. Place of sitting of Court.

(1)[The High Court] [Substituted for 'His Highness' by Notification 3-L/85 published in the Government Gazette dated 3th Bhadon, 1985.] may fix the place or places at which any Court under this Act is to be held.(2)The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.(3)Except as may be otherwise provided by any order under this section, a Court under this act may be held at any place within the local limits of its jurisdiction.

27. Suspension or removal.

(1)Any District Judge may be suspended or removed from office by [the Government] [Substituted by Act XIV of 2002 for 'His Highness'. (For earlier amendments see Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985, Act X of 1996 and Act XI of 2000).] on the report of the High Court.(2)[Any Subordinate Judge or Munsiff may be suspended from office by the High Court subject to the confirmation of the Government or removed from office by the Government on the report of the High Court.] [Section 27(2) substituted ibid.]

28. Control of Courts.

- Subject to the general superintendence and control of the High Court, the District Judge shall have control over all the Civil Courts under this Act within the local limits of his jurisdiction.

29. Power of distribute business.

- Notwithstanding anything contained in the Code of Civil Procedure, every District Judge may by written order direct that any civil business cognizable by his Court and the Courts under his control shall be distributed among such Courts in such manner as he thinks fit:Provided that no direction

issued under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its jurisdiction.

30. Ministerial officers of Subordinate Courts.

(1)The ministerial officers of the District Courts shall be appointed, and may be suspended or removed by the Judges of those Courts respectively.(2)The ministerial officers of all courts controlled by a District Court, other than Courts of Small Causes, shall be appointed, and may be suspended or removed by the District Court.(3)Every appointment under this section shall be subject to such rules as [the High Court] [Substituted for 'His Highness' by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] may prescribe in this behalf, and in dealing with any matter under this section, a Judge of a Court of Small Cause shall act subject to the control of the District Court.(4)Any other passed by a District Judge under this section shall be subject to the control of the High Court.

31. Powers to fine Ministerial officers.

(1)A District or any Court under the control of District Court may fine, in an amount not exceeding one month's salary, any ministerial officer of the Court for misconduct or neglect in the performance of his duties.(2)The District Court may, on appeal or otherwise, reverse or modify an order made under sub-section (1) by any Court under its control, and may, of its own motion, fine up to the amount of one month's salary any ministerial officer of any Court under its control.

32. Delegation of District Judge's powers.

- A District Court may, with the previous sanction of [the High Court] [Substituted for 'His Highness' by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] , delegate to any Subordinate Judge in the District the power conferred on a District Court by section 28, 29 and 30 of this Act and section 24 of the Code of Civil Procedure, to be exercised by the Subordinate Judge in any specified portion of the districts, subject to the control of the District Court.

33. Appeals from District Judge or Additional Judge.

(1)Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge exercising original jurisdiction, shall lie to the High Court.(2)An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which the decree or order had been made by the District Judge, an appeal would not lie to that Court.

34. [Appeals from Subordinate Judges and Munsiffs. [Section 34 substituted by Act XIII of 1989 Section 2.]

(1) Save as aforesaid an appeal from a decree or order of a Subordinate Judge or a Munsiff shall lie to the District Judge. (2) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge. (3) An appeal from the order of the District Judge on the appeal from the order of the Subordinate Judge or the Munsiff under sub-section (1) shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.]

35. Power to transfer to Subordinate Judges appeals from Munisffs.

(1) A District Judge may transfer any appeals pending before him from the decrees or orders of Munsiffs to any Subordinate Judge under his administrative control competent to dispose of them. (2) The District Judge may withdraw any appeal so transferred and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it. (3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge. (4) The powers conferred by this section shall be exercised subject to such general or special orders as may from time to time be issued in this behalf by the High Court.

35A. [[Section 35-A inserted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.]

Except as otherwise provided by this Act any powers that may be conferred by the High Court on any person under this Act may be conferred on any such person either by name or by virtue of office.]

36. Continuance of powers of officers.

- Whenever any person holding an office in the service of the State who, has been invested with any powers under this Act throughout any local area is transferred or posted at any subsequent time to an equal or higher office of the same nature within a like local area, he shall, unless [the High Court] [Substituted for 'His Highness' by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.] otherwise directs or has otherwise directed exercise the same powers in the local area to which he is so transferred c posted.

37. Vacations.

(1) Subject to such orders as may be made by [the Government] [Substituted by Act X of 1996 for 'His Highness'.] the days declared in the Jammu and Kashmir Government Gazette by [the Government] [Substituted by Act X of 1996 for 'His Highness'.] as public holidays shall be observed as close holiday m Civil Courts. (2) A Judicial act done by a Civil Court on a day specified as close

holiday shall not be invalid by reason only of its having been done on that day.

38. Transfer of proceedings.

- Subject to the provisions of any enactment for the time being in force, the High Court may of its own motion, or on the application of party, withdraw any proceeding which is pending in any Court subordinate to it, and for the withdrawal of which provision is not made in sections 24 and 141 of the Code of Civil Procedure, and may either itself dispose of the proceeding or transfer it for disposal to any other subordinate Court.

39. Continuance of proceedings on termination of jurisdiction of a Court.

(1)Where any Civil Court has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of former Court has been transferred.(2)Nothing in this section applies to cases for which provision is made in paragraph 17 of the second Schedule or section 37 of the Code of Civil Procedure or in any other enactment for the time being in force.

40. Bar against trial of certain suits and appeals.

(1)The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested.(2)The presiding officer of an Appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity.(3)When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.(4)The superior Court shall thereupon dispose of the case under section 24 of the Code of Civil Procedure.

41. Subordinate court defined.

- For the purposes of the last foregoing section the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and for the purposes of the Code of Civil Procedure, the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge.

42. Saving.

- All powers conferred, local limits of jurisdiction of Courts defined and all places fixed for holding of Courts before this Act comes into force shall be deemed to have been conferred, determined and fixed under this Act.

43. [[Section 43 inserted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.]

In every enactment for the time being in force and in every appointment, order, rule, bye-law, notification, form and document all references to the [High Court] or the Judge of the High Court shall be construed when necessary and with such grammatical variations as may be required as having been made to the [High Court of Judicature, Jammu and Kashmir State] [Now the High Court of Jammu and Kashmir.], or a Judge thereof, as the case may be, except when the contrary intention appears from the subject, or context.]