

The Madhya Bharat Small Cause Courts Act, Samvat, 2006

MADHYA BHARAT

India

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Act 46 of 1949

- Published on 1 January 1949
- Commenced on 1 January 1949
- [This is the version of this document from 1 January 1949.]
- [Note: The original publication document is not available and this content could not be verified.]

The Madhya Bharat Small Cause Courts Act, Samvat, 2006(Act No. 46 of 1949)Received the assent of His Highness the Raj Pramukh on 27-5-1959.An Act to consolidate and amend the law relating to Courts of Small Causes established within the United State of Gwalior, Indore and Malwa (Madhya Bharat).Whereas it is expedient to consolidate and amend the law relating to Court of Small Causes established within the United State of Gwalior, Indore and Malwa (Madhya Bharat), it is hereby enacted as follows :-

Chapter I Preliminary

1. Title, extent and commencement.

(1)This Act may be called the United State of Gwalior, Indore and Malwa (Madhya Bharat) Small Cause Courts Act, Samvat 2006.(2)It shall extend to the whole of the United State of Gwalior, Indore and Malwa (Madhya Bharat) and shall come into force from such date as may be notified by the Government in this behalf in the Government Gazette of the said United State.

2. Repeal.

- As soon as this Act comes into force the Small Cause Courts Act, Gwalior State Samvat, 1998, and other laws relating to Courts of Small Causes, for the time being in force, in any of the Covenanting States, shall stand repealed :Provided that any enactment or document referring to the above-mentioned Act, or laws, shall so far as may be, be construed to refer to this Act or to the corresponding part thereof and all orders given or taken, as the case may be, under this Act.

3. Savings.

(1) 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 (c) any local law or any special law other than the Code of Civil Procedure.

4. Definitions.

- In this Act, unless there is anything repugnant in the subject or context,-(1) "United State" means the United State of Gwalior, Indore and Malwa (Madhya Bharat); (2) "Government" means the Government of the United State; (3) "Covenanting State" means a State which has covenanted to unite for the purpose of forming the United State and has subsequently merged in it or which may in future merge in the said State; (4) "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.

Chapter II

Constitution of Courts of Small Causes

5. Establishment of Courts of Small Causes.

(1) The Government may, by order in writing establish a Court of Small Causes at any place within the United State : Provided that the Courts of Small Causes already established under any Act or law of any of the Covenanting State before the date of the commencement of this Act shall be deemed to have been established under this Act and shall continue and function till abolished or modified by a Competent Authority under this Act. (2) The local limits of the Court of Small Causes shall be such as the Government may define, and the Court may be held at such place or places within those limits as the Government may appoint.

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 Court 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 sanction of the High 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) If the Government so direct there may be appointed, by order in writing, Additional Judge 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) When the Judge is absent, the senior Additional Judge may discharge all or any of the functions of the Judge.

9. Power to require two Judges to sit as a Bench.

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

10. 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, 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 the Chapter of the Code of Civil Procedure dealing with reference 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.

11. 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 direct. (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 the powers and duties it thinks fit, and regulating the mode in which power and duties so conferred and imposed are to be exercised and performed.

Chapter III

Jurisdiction of Courts of Small Causes

12. Cognizance of suits by Courts of Small Causes.

(1)A Court of Small Causes shall not take cognizance of the suits specified in the Schedule as suits excepted from the cognizance of a Court of Small Causes.(2)Subject to the exceptions specified in that schedule and to 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 Small Causes.(3)[Subject to as aforesaid, the High Court 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.] [Inserted by M.P Act No. 19 of 1958.]

13. 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 IV

Practice and Procedure

14. Application of the Code of Civil Procedure.

(1)The procedure prescribed in the Code of Civil Procedure, 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 judgement 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 judgement or give such security for the performance of the decree or compliance with the judgement 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 realised in manner provided by the section of the Civil Procedure Code in force for the time being in the United State corresponding to Section 145 of the Indian Code of Civil Procedure.

15. 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 Munsarim 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 day for the further hearing thereof.

16. 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 Civil Procedure Code in force for the time being in the United State corresponding to the second paragraph of Section 53 of the Indian Code of Civil Procedure and make such order with respect to costs as it deems just, and Court shall for the purposes of the Limitation Act, in force for the time being, 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.

17. Appeal from certain orders of Courts of Small Causes.

- Where an order specified in the provision of the Civil Procedure Code in force for the time being in United State corresponding to clause (ff) or clause (h) of sub-section (1) of Section 99 of the Indian Code of Civil Procedure, is made by a Court of Small Causes, an appeal therefrom shall lie to the High Court on any ground on which an appeal from such order would lie under the section.

18. Revision of decrees and orders of Courts of Small Causes.

- The High Court for the purposes 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.

19. 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.

Chapter IV

Supplemental Provisions

20. Subordination of Courts of Small Causes.

- A Court of Small Causes shall be subject to the superintendence of the High Court, and shall-(a)keep such registers, and books as the High Court from time to time prescribes; and(b)comply with such acquisitions as may be made by the High Court of the Government for records, returns and statements in such form and manner as the authority making the requisition directs.

21. Seal.

- A Court of Small Cause shall use a seal of such form and dimensions as are prescribed by the Government.

22. Abolition of Courts of Small Causes.

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

23. Saving of power to appoint Judge of Court of Small Causes to other office.

(1) Nothing in this Act shall be construed to prevent 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 his Court shall be subject to any rules which the Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of other office.

24. Application of Act to 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 them; and, 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.

25. Application of Act and Code to Court so invested as to two Courts.

- A Court invested with 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 the Code of Civil Procedure, be deemed to be different Courts.

26. 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 not 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 the provision of Civil Procedure Code in force for the time being in the United State corresponding to Rule 6 of Order XXI of the Indian Code of Civil Procedure shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent.

27. Continuance 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 the jurisdiction try the suit. (2) Nothing to this section applies to cases for which special provision is made in the Code of Civil Procedure as extended to Court of Small Cause or in any other enactment for the time being in force.

28. Publication of certain orders.

- All orders required by this Act to be made in writing by the Government shall be published in the Official Gazette.

Schedule

[See Section 12] Suits Excepted from the Cognizance of a Court of Small Causes

1. A suit concerning and act done or purporting to be done by or by order of the 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 Civil Judge acting in the execution of his office;

3. A suit concerning an act, or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or 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;**
- 5. A suit for the partition of immovable property;**
- 6. A suit by a mortgagee of immovable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgage or of immovable property for the redemption of the mortgage;**
- 7. A suit for the assessment, enhancement, abatement or apportionment of the rent of immovable property;**
- 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 Government with authority to exercise jurisdiction with respect thereto;**
- 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 the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive periodically recurring right to discharge the functions of the 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 does are payable to a person by reason of his interest in immovable properly or in an hereditary office or in a shrine or other religious institution;**
- 14. A suit to recover from a person to whom compensation has been paid under the Land Acquisition Act, for the lime being in force 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 suit by a co-trustee to enforce against the estate of a deceased trustee as claim for contribution;**
- 19. A suit for a declaratory decree, not being a suit instituted under the provisions of the Code of Civil Procedure, in force for the time being, corresponding to Section 283 or Section 332 of the Indian Code of Civil Procedure;**
- 20. A suit instituted under the provisions of the Code of Civil Procedure, in force for the time being corresponding to Section 282 or Section 332 of the Indian Code of Civil Procedure;**
- 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;**
- 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 judgement as defined in the Code of Civil Procedure or upon a judgement obtained in the United State;**
- 26. A suit to compel a refund of assets improperly distributed under the provision of the Code of Civil Procedure in force for the time being, corresponding to Section 295 of the Indian Code of Civil Procedure;**

27. A suit under the provision of any law corresponding to Section 320 or Section 321 of the Indian Succession Act, 1865, or under the provision of any law corresponding to Section 139 or Section 140 of the Probate and Administration Act, 1881, 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 transactions; 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 mortgagee has been satisfied to recover surplus collections received by the mortgage, and a suit for the profits on immovable property belonging to the plaintiff which have been wrongfully received by the defendant;

32. A suit for a general average loss;

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;

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;(j)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;(k)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;(l)for improper arrest under the

Chapter of the Code of Civil Procedure in force for the time being corresponding to Chapter XXXIV of the Indian Code of Civil Procedure or in respect of the issue of an injunction wrongfully obtained under its Chapter corresponding to Chapter XXXV of the Indian Code; or(m)for injury to the person in any case not specified in the foregoing sub-clauses of this clause;

36. A suit by a Mohammedan for exigible (mu ajjal) or deferred (mu wajjal) dower;

37. A suit for the restitution of conjugal rights, for the custody of a minor, or for a divorce;

38. A suit relating to maintenance;

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 mortgagors of immovable property for contribution in respect of money paid by him 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;

44. 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;

45. A suit the cognizance whereof by a Court of Small Causes is barred any enactment for the time being in force.