**REPLY TO THE APPLICATION TO RETURN PLAINT**

IN THE COURT OF THE MUNSIF....................

Reply to Civil Misc. Application No..................... of 19....................

in

Original Suit No..................... of 19....................

A. B.................................................................... Plaintiff

*versus*

C. D................................................................ Defendant

Sir,

Reply of the Plaintiff to the aforesaid application is most respectfully submitted as follows:

1. That the application is filed on misconceived conception of law and facts on record.

2. That Section 6 of the Rajasthan Relief of Agriculturist Indebtedness Act, 1957 makes it abundantly clear that though an additional right has been given to a creditor to file such application under sub-section (2) of Section 6 of the Act, but it shall be the Debt Relief Court having jurisdiction in the area in which the debtor ordinarily resides or earns his livelihood.

3. The entire scheme of the Act aforesaid shows that it was enacted for the benefit of an agriculturist and to grant him relief from indebtedness. It is the debtor who has been made entitled to move such an application under sub-section (1) of Section 5 of the Act.

4. That under the provisions of the Act, it is the Debt Relief court which has jurisdiction and not the alleged court where the debtor ordinarily resides.

5. That the application of the defendant is liable to be dismissed with costs.

Plaintiff

Dated.................... Through

Counsel

**case law**

***Section 9***

**SUPERANNUATION — RELIEF OF BACK-WAGES WHETHER COULD RE GRANTED BY CIVIL COURT.**

Where the employee stood super annuated even on basis of the corrected date of birth by the time the civil suit came to be decided in his favour, the relief of back-wages could not be granted by the Civil Court.1

**CIVIL COURT — INDUSTRIAL DISPUTES ACT EXCLUDES JURISDICTION OF CIVIL COURT IN RESPECT OF REMEDIES AVAILABLE UNDER THE ACT.**

The Industrial Disputes Act not only confers the right on a worker for reinstatement and back wages if the order of termination or dismissal is not in accordance with the standing order but also provides a detailed procedure and machinery for getting this relief. Under the circumstances therefore there is an apparent implied exclusion of the jurisdiction of the Civil Court. The scheme of the Industrial Disputes Act clearly excludes the jurisdiction of the civil court by implication in respect of remedies which are available under the Act and for which a complete procedure and machinery has been provided in the Act. In view of language of Section 10 read with Section 12(5) of the Act as has been held by the court an adequate remedy is available to the appellant plaintiff under the Scheme of the Industrial Disputes Act itself which is the Act which provides for the relief of reinstatement and back wages which in fact the appellant sought before the Civil Court by filing a suit. So far as the present suit filed by the appellant plaintiff is concerned there appears to be no doubt that civil court had no jurisdiction and the High Court was right in coming to the conclusion. A contract of employment for personal service could not be specifically enforced and it is also clear that except the industrial law, under the law of contract and civil law, an employee whose services are terminated could not seek the relief of reinstatement or back wages. At best he could seek the relief of damages for breach of contract.2

**INDUSTRIAL DISPUTES ACT EXCLUDES JURISDICTION OF CIVIL COURT.**

Provisions of Industrial Disputes act impliedly excludes jurisdiction of Civil Court.3

**COURT CANNOT PASS ORDER WHICH WOULD UNJUSTLY ENRICH TO ONE PARTY.**

The court cannot pass any order which would unjustly enrich to one party at the cost of the other and in order to unjustly enrich to one party it would cause injustice to other, in other words, in order to protect one’s right the other’s right would be destroyed. In the instant case, we are unable to hold that the appellant is entitled to occupy the premises during the pendency of the appeal on the strength of injunction on the basis of the contractual rate entered in the year 1955. The contractual period has come to an end and under the lease agreement there was no scope for increasing the rate of rent and at this stage, after the lease period expired it would be unjust and illogical to uphold the right of the appellant to continue occupation under the contractual rate. The Court seeks to cut down technicalities attendant upon a statutory procedure where this cannot be shown to be necessary to the fulfillment of the purposes of the legislation. The possession of the appellant became unlawful after the expiry of the lease and that such unlawful occupation has been confirmed by the judgment and decree passed by the-court below and that under such circumstances, if the court pass an order for maintaining the possession of such appellant, the court must compensate the appellant and that we cannot allow the party to contend that he is entitled to enjoy premises at a rate fixed in 1955 at this stage.4

**WHERE STATUTE ITSELF PROVIDED MACHINERY FOR ENFORCEMENT OF RIGHT** EVEN **IN ABSENCE OF EXCLUSIONARY PROVISION CIVIL COURT JURISDICTION BARRED.**

Generally speaking, the broad guiding considerations are that wherever a right, not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created *unto flatu* and a finality is intended to the result of the statutory proceedings then, even in the absence of an exclusionary provision the Civil Courts jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the Civil Court’s jurisdiction, then both the common-law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inherence.5

**EXCLUSION OF JURISDICTION OF CIVIL COURT — WHEN CAN BE INFERRED.**

Generally speaking, the broad guiding considerations are that wherever a right, not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created unto flatu and a finality is intended to the result of the statutory proceedings then, even in the absence of an exclusionary provision the Civil Courts jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the Civil Court’s jurisdiction, then both the common-law and the statutory remedies might become concurrent remedies leaving open an element of election to the person of inherence.6

**JURISDICTION OF CIVIL COURT.**

Article 226 provides a constitutional remedy. It confers the power of judicial on High Courts. The finality clause in a statute is not a bar to the exercise of this constitutional power whereas the jurisdiction of a civil court arises from another statute, viz. Section 9 of the Code of Civil Procedure. In such a case, the bar arising from an express provision like Rule 25 in Karnataka Municipal Corporations Act or arising by necessary intendment can be over-ridden only in cases and situations pointed out in A.I.R. 1969 S.C. 78.7

**CLAIM TO BE ADJUDICATED BY CONSOLIDATION AUTHORITIES — CIVIL COURT JURISDICTION BARRED.**

Claim was disputed by the appellants and other members of family. This claim had to be adjudicated by the consolidation authorities, since it was a matter falling within the scope of adjudicatory functions assigned to the consolidation authorities under the Act and the jurisdiction of the Civil Court to entertain the suit in respect of the said matter was expressly barred.8

**TERRITORIAL JURISDICTION.**

***Section 20***

Under the Explanation to Setion 20 of Civil PC, a suit can be filed against a Corporation where its subordinaate office is situated only in respect of a cause of action arising at the place where it has its subordinate office.9

In view of Sectionn 20 of Civil PC it cannot always be said that only one Court will have jurisdiction to try the suit.9A

***Section 20(A)***

Where the cause of action had arisen at a place where respondent Corporation had its Subordinate office the court at such place would have jurisdiction and not at the place where respondent corporation had its principal office.98

**APPLICABILITY OF SECTION 141 CPC**

***Section 141***

There will be no difficulty in applying section 141 to proceedings arising under Order IX, CPC including applications to restore an application filed for restoring the suit dismissed for default in view of specific inclusion of said proceedings within the ambit of Section 14l.9C

**DUTY OF DEFENDANTS PLEADING BAR OF JURISDICTION.**

Where the dispute is one which would be cognizable by the civil Court, the defendants who plead the bar must show bar of cognizance by express or implied provisions in any statute. It is for the defendants to show how cognizance is barred.10

**JURISDICTION TO BE DECIDED ON ALLEGATIONS IN PLAINT.**

The jurisdiction of a Civil Court to entertain a suit depends upon the allegations in the plaint and not upon what may ultimately be found to be true.11

**JURISDICTION TO BE DECIDED ON MATERIALS BEFORE COURT.**

Determination of jurisdiction is to be made by Court on materials before it.12

**ENFORCEMENT OF RIGHT CONFERRED BY HINDU SUCCESSION ACT THROUGH CIVIL SUIT.**

The right conferred by Section 22 of Hindu Succession Act is to be enforced by regular suit by resorting to Civil Procedure Code.13

**EXCLUSION OF JURISDICTION TO BE PROVED STRICTLY.**

Exclusion of jurisdiction of Civil Court under this section must be strictly proved; it cannot be readily inferred.14

**FORUM FOR SUIT CONTAINING TWO RELIEFS ONE TRIABLE BY CIVIL COURT AND OTHER BY REVENUE COURT.**

Where a portion of claim made in the plaint was triable by a Civil Court and the other was triable by a revenue Court, such suit could be tried by the Civil Court and what is necessary is to refer to the Revenue Court the issue which is not triable by the Civil Court.15

**EXCLUSIVE JURISDICTION OF REVENUE COURT.**

Where provisions is made as to exclusive jurisdiction to Revenue Court and Civil Court also has jurisdiction on other issues, the Civil Court is under statutory obligation to refer the issue to Revenue Court and decide the same according to the decision of that authority.16

**GENERAL EXTENT OF JURISDICTION.**

The jurisdiction of civil Courts is all embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law.17

**ILLUSTRATIVE CASES.**

A civil Court has jurisdiction to entertain suit for permanent injunction wherein relief is claimed by Muslims from being prevented in uttering "Ameen" loudly in mosque after prayers.18

**WHEN JURISDICTION OF CIVIL COURT NOT OUSTED.**

Suit for cancellation of sale of agricultural land and house is not ousted by Section 331 of the U. P. Zamindari Abolition and Land Reforms Act.19

1. Ishwar Singh v. National Fertilizers, A.I.R. 1991 Supreme Court 1546: 1991 Supp. (2) S.C.C. 649.

2. Jitendra Nath Biswas v. M/s. Empire of India and Ceylone Tea Co., A.I.R. 1990 S.C. 255.

3. Jitendra Nath Biswas v. M/s. Empire of India and Ceylone Tea Co., A.I.R. 1990 Supreme Court 255: 1989 (3) S.C.C. 582: 1989 (2) Lab.L.J. 572: 1990 Lab.I.C. 308: 1989 (2) Guj.L.J. 373: 1989 (3) Com.L.J. 99.

4. Jagat Narayan Singh v. Rabindra Mohan Bhandari, 1992 (1) C.C.C. 651.

5. Raja Ram Kumar v. Union of India, A.I.R. 1988 Supreme Court 752.

6. Raja Ram Kumar v. Union of India, A. I. R, 1988 Supreme Court 752.

7. Srikant Kashinath Jituri v. Corporation of the City of Belgaum, A.I.R. 1995 S.C. 288.

8. Sita Ram v. Chhota Bhondey, A.I.R. 1991 Supreme Court 249: 1990 (4) J.T. 339: 1991 Supp. (1) S.C.C. 556: 1990 All.L.J. 875.

9. Thompson Press (India) Ltd. v. U. P. State Road Transport Corporation, 2001 (1) CCC 11 (Del. ).

9A. Khaleel Ahmed v. Haiti Gold Mines Co. Ltd., AIR 2000 SC 1926.

9B. M/s. Famous Construction v. National Projects Construction Corporation Ltd., AIR 2000 Del. 404.

9C. T. Krishnaswamy v. Smt. Maniyamma, AIR 2001 AP 37.

10. Narasingha Madala v. Bondoka Naik, 1972 A. W. R. 139.

11. A.I.R. 1976 All. 349 (D.B.).

12. A.I.R. 1977 Cal. 161 (D.B.).

13. A.I.R. 1980 Cal. 53.

14. A.I.R. 1976 Punj. 341 (D.B.): 1976 Rev.L.R. 457: 1976 P.L.R. 480: I.L.R. (1977) Punj. 504: 78 P.L.R. 537.

15. Badri Lal v. Moda, A.I.R. 1979 Raj. 142 (F.B.): 1979 W.L.N. 570: 1979 Raj. L.W. 164.

16. A.I.R. 1979 S.C. 653.

17. A.I.R. 1980 All. 379 (F.B.): 1980 All.W.C. 317: 1980 Tax.L.R. 2369.

18. A.I.R. 1980 All. 342.

19. A.I.R. 1978 All. 421: (1978) 4 All.L.R. 650: 1978 All.W.C. 549: 1978 All.L.J. 659.