Justice V.C.Misra ***U.P. State Law Commission***
Chairman Lucknow

Dear Chief Minister/Law Minister,

I have great pleasure in forwarding herewith First Report of the State Law Commission proposing certain amendments in Sub-rule 2 of Rule 2 of Order XXXIX of the Code of Civil Procedure.

As mentioned in the second Paragraph of the Report the Commission has taken up the subject matter suo motu for consideration.

With kind regards,

Yours sincerely

(Justice V.C.Misra)

Sushri Mayawati,
Chief Minister/Law Minister,
Uttar Pradesh,
Lucknow.

UTTAR PRADESH STATE LAW COMMISSION

FIRST REPORT OF HON'BLE MR. JUSTICE V.C. MISRA

FIRST REPORT-2008

PROPOSED AMENDMENTS

IN PROVISO TO SUB RULE (2) OF RULE 2 OF

ORDER XXXIX

OF THE

CODE OF CIVIL PROCEDURE, 1908

UTTAR PRADESH STATE LAW COMMISSION

FIRST REPORT

Proposed Amendments in Proviso to Sub-Rule 2 of Rule 2 of Order XXXIX of the Code of Civil Procedure, 1908

CONTENTS

INTRODUCTION

The Uttar Pradesh State Law Commission was created vide notification number 166/79-V-1-08 dated 28th January, 2008 by the State Government for examining the various State Acts, making suggestions for speedy dispensation of justice in Civil, Criminal and Revenue matters after examining the causes for delay and proposing measures for cheaper justice to the litigants at large and for submitting recommendations regarding necessary required Amendments, Revision, Consolidation and Repeal of the enactments.

The Commission in its first meeting held on the 6th August, 2008 suo motu decided to take up the matter related to huge pendency of civil cases over all the courts and cause of delay in disposal thereof. During discussions it was felt that due to certain amendments made by the State Government of Uttar Pradesh in Sub-Rule (2) of Rule 2 of Order XXXIX of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'the Code') imposing certain limitations/bars on passing of interim injunctions/stay orders, large number of cases are being filed before the High Court and it emerged that by such amendments to some extent power of civil courts has been unnecessarily curtailed.

It is general impression among the people particularly in legal-fraternity, that the State Government has imposed certain unholy restrictions on the civil courts regarding passing of orders for injunction and thus curtailed the jurisdiction. We are of the view that this is misconceived thinking because certain special laws are already there which clearly bar the jurisdiction of civil courts as they are dealing with the concerned matters like injunction, service, educational institutions and election etc. vide Special Relief Act, 1973, the Uttar Pradesh Public Service (Tribunal) Act, 1976, the Industrial Disputes Act, 1947, the Trade Union Act, 1926, the Administrative Tribunal Act, 1985, the Representation of People Act, the Uttar Pradesh University Act, 1973 and Constitution of India, which have been discussed in the report at length. This clearly shows that certain provisions which are inserted by the U.P. Act No. 57 of 1976 in proviso to sub-rule (2) of Rule 2 of Order XXXIX of the Code are redundant as civil courts are not only bound to observe the different provisions of the Code but also bound to observe the different provisions of different enactments before passing any order for injunction.

The State amendments were made to achieve the object of speedy disposal of civil cases pending in court courts and prevention of dilatory tactics in injunction cases. The commission had the advantage of perusal of an important decision of the Allahabad High Court rendered in the case

of **Naresh Chandra and others vs. District Magistrate, Nainital and others (AIR 1990 All 188)** wherein Hon'ble Mr. Justice Ravi S. Dhavan (as he then was) commenting on the State amendments in proviso to sub-rule (2) of Order XXXIX of the Code vide U.P. Act No. 57 of 1976 at para 51,52, and 53 has observed as under:

> '**Para 51**….this court is constrained to reflect in the amendment which has been brought in the Code of Civil Procedure in reference to Order 39 Rule 2,as it applies in the State of Uttar Pradesh. The present case is a fit case for this Court to observe on the disastrous effect this amendment has on the confidence and integrity of the subordinate judiciary. This amendment reflects on the faith and confidence of the subordinate judiciary by implication suggest that the subordinate judiciary is not to be trusted with the power to consider the grant of injunction in certain matters and subjects. Why? If the purpose was that too many indiscriminate injunctions granted interfered with the policy, administration or the management of the State departments, institutions or local bodies, then the remedy lay in the appellate structure or the judicial process of revision inherent and prescribed by the Civil Procedure Code, and not by certifying that as a class the subordinate judiciary is not t o be trusted with the powers to issue such injunctions, which at present they are prohibited to grant. The irrationality is irreconcilable in judicial interpretation. Where does this approach to distrust or lack of confidence in the subordinate judiciary end? A District Judge can judge and indict and award a capital punishment, in other words a District Judge can deprive life and liberty according to law, but cannot grant an injunction in certain matters, likewise a Magistrate may commit a person to sessions but cannot consider the grant of injunction. It is difficult to rationalize the arbitrariness that on one day a District Judge is not to have the power to issue injunctions in certain related matters, and the next day the same District Judge as a High Court may. **(Emphasis supplied)**
>
> **52.** An injunction the grant or the denial of it is necessary corollary or an appendage to an actionable claim or a suit. The quality of an injunction is after all subject to judicial scrutiny in a higher tier by appeal or otherwise.

> **53.** The legislation in any case has turned to be a counter-productive exercise by flooding the High Court with writ proceedings. Whenever an injunction may have been denied in a suit, but for the amendment to O.XXXIX, R. 2 of the Code, the pressure has come on the writ jurisdiction of this High Court."

It must be remembered that law is not an antique to get it taken down, dusted, admired and put back on the shelf. It is rather like an old yet vigorous tree having its roots in history yet taking grafts, putting out sprouts occasionally dropping dead wood. Since societies are prone to continuous changes and are not likely to ever remain static, the field of legislation is, thus, such a sphere that is never perfectly complete. There always remain conditions which escape formal translation into law and yet these continue to influence society and their member. Statute law revision is a very important matter which should be undertaken at every convenient opportunity. In **Magan Law Chhagan Lal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and others (1974) 2 SCC 402)** the Apex Court has held that, things are not static either in law or in life. There is a continuing process of growth of law, and one can retard it only at the risk of alienating law from life itself.

In these backgrounds the Commission after thorough examination of the scope and ambit of the existing provisions as well as the provisions which stood before such amendments on the above noted subject found that certain amendments in the proviso to sub-rule (2) of Rule 2 of the Order XXXIX of the Code are necessary to be made. The principles underlying the scheme were discussed at a meeting of the Commission held on the 21st August, 2008 and entrusted the task to Sri Ishwar Dayal, Full Time Member of the Commission to research upon this subject matter with all

the possible assistance of the Ex Officio Member, Sr. V.K. Mathur, Director, Judicial Training & Research Institute, Lucknow and Part Time Member Prof. Balraj Chauhan, Director, Dr. Ram Manohar Lohiya National Law University, Lucknow.

The Commission generally held its meetings at Commission's Head Quarter and its camp office at Allahabad on various dates. A draft Report prepared in the light of the discussions was finally circulated to all the members of the Commission and their views were invited thereon. The views on the draft Report were discussed at a meeting of the Commission held on 02.12.2008. The Report of the Commission proposing certain amendments in Proviso to sub-rule (2) of Rule 2 of Order XXXIX of the Code to be submitted to the Government has been finally settled, approved and signed by the Chairman and the Members of the Commission at its meeting held on **24.12.2008.**

We would like to express our gratitude to Dr. K.N.Chaturvedi, Former Secretary to the Government of India and Member-Secretary, Law Commission of India for the noble assistance and cooperation rendered by him during the course of meeting and deliberations.

The Commission wishes to acknowledge the valuable services and assistance rendered by Shri Santosh Kumar Pandey, Secretary of the

Commission, officers and officials of the Commission in the preparation of the Report.

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CHAPTER-I

Injunction-

1. The nature of remedy by way of Injunction

Injunction is a measure of preventive relief. The injunction is a judicial process whereby the parties are ordered to refrain from doing or to do a particular act or thing. The court can grant injunctions, temporary, perpetual, permanent or mandatory. Civil Courts deal with civil rights of persons and they can grant relief only if a legally recognized right of a person is infringed. Temporary injunctions are such as to continue until for a specific time or such further order of the court. [Section 37(1) of the Specific Relief Act, 1963].

Perpetual injunction can only be granted by a decree made at the hearing of both the parties and the defendant is thereby perpetually enjoined from the assertion of a right or from the commission of an act which may be contrary to the right of plaintiff. [Section 37(2) of the Specific Relief Act, 1963]. The party who disobeys an injunction exposes himself to the charge of contempt of court. The court issuing injunction can deal with its disobedience even after the dismissal of the suit.

Writ or injunction may take a positive form. It may require a party to do a particular thing. In such case the injunction is described as mandatory. To prevent a breach of obligation, the court may compel the performance of certain act. The court may also grant an injunction to prevent the breach

complained of and also to compel performance of the requisite act. In addition or in substitution to perpetual injunction as well as mandatory injunction, the court may also award damages. (Section 39 of the Specific Relief Act, 1963).

2. Temporary Injunction and Interlocutory Orders

Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 deals with the temporary injunctions and interlocutory orders. Prior to 1976 State Amendments vide U.P. Act 57 of 1976, the Order XXXIX Rule 1 and 2 reads as under:

"TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS."

Temporary Injunctions

Rule 1: Cases in which temporary injunction may be granted:-

Where in any suit it is proved by affidavit or otherwise:

(a) that any property in dispute in a suit in danger of being wasted, damaged or alienated by any property to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise

(d) cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

Rule 2: Injunction to restrain repetition or continuance of breach;

(1) In any suit for restraining the defendant from committing a breach of contract or other inquiry of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Courts think fit.

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CHAPTER-II

State Amendments to restrict the power of the Civil Courts to issue injunction orders.

The State Government of Uttar Pradesh felt that generally injunction orders are being obtained from the civil courts on frivolous grounds by the plaintiff to achieve its goal with the help of clever and shrewd lawyer which later on for the second party it becomes very difficult to vacate the said injunction order, therefore, in 1976 the State Government of Uttar Pradesh through Uttar Pradesh Civil Laws (Reforms and Amendments) Act, 1976 (U. P. Act No. 57 of 1976) brought certain amendments in sub-rule (2) of Rule 2 in Order XXXIX of the Code. The motive of the amendment was to insert a proviso with the following aims and objects namely, **undue delay in disposal of civil cases and the growing tendency to abuse the process of court by frivolous litigation which was detrimental to the interests of the society in general and the poorer sections in particular.** By the U.P. Act No. 57 of 1976, the following proviso in Order XXXIX in Rule 2 in sub-rule (2) of the Code have been inserted, which read as under:

"**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 41 of the Specific Relief Act, 1963 (Act 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 employee including any employee of the government, or

(c) To stay, any disciplinary proceeding pending or intended or, the effect of any adverse entry against any employee of the government, or

(d) To affect the internal management or affairs of, any educational institution including a University, or a society, or (omitted by U.P. Act 17 of 1991).

(e) To restrain any election, or

(f) To restrain, any auction intended to be made or, the affect of any auction made, by the Government unless adequate security is furnished, or

(g) To stay the proceeding for the recovery of any dues recoverable as land revenue unless adequate security is furnished, or

(h) In any matter where a reference can be made to the chancellor of a University under any enactment for the time being in force;

and any order for injunction granted in contravention of these provisions shall be void.”

CHAPTER-III

The State Government, later on to enable the civil courts to issue temporary injunctions, such in cases relating to the management or internal affairs of educational institutions including the Universities and Societies, by Uttar Pradesh Civil Laws (Amendment) Act, 1991 (U.P. Act No. 17 of 1991) omitted the aforesaid clause (d) of the proviso to sub-rule (2) of Rule 2 of Order XXXIX of the Code which was brought in by the amending U.P. Act No. 57 of 1976.

After omitting the clause (d) of the proviso to sub rule 2 of rule 2 of Order XXXIX of the Code, now it is being felt that whether the above proviso which was inserted by the U. P. Act No. 57 of 1976 has any fruitful meaning to retain as such, as certain provisions of the said State amendment have become redundant because of certain special laws which have already ousted the jurisdiction of civil courts and have made certain special provisions therein to deal with the cases for which State amendments have been made and as to whether they give good message to the public at large or such impression that unnecessary certain restrictions have been imposed on civil courts regarding injunction matters. The questions whether civil courts jurisdiction in respect of a subject matter has been barred and exclusive jurisdiction over the same has been invested in any statutory tribunal and is so, to what extent including jurisdiction.

Hence, clause wise interpretation of proviso to sub-rule (2) of Rule 2 of Order XXXIX of the Code, as inserted by the U.P. Act No. 57 of 1976, have to be viewed in the light of the statement of object and reasons.

Restricting perpetual injunction;

Clause (a)- Where no perpetual injunction could be granted in view of Section 38 and Section 41 of the Specific Relief Act, 1963 (Act 47 of 1963), or.

In the light of above Clause (a) we have to go through the Section 38 and Section 41 of the Specific Relief Act, 1963 which reads as under:-

Section 38: Perpetual Injunction when granted

(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:-

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Section 41: Injunction when refused-

An injunction cannot be granted-

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceeding;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trusts;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;

(j) when the plaintiff has no personal interest in the matter.

In addition to section 38 and section 41 of the Specific Relief Act it appears necessary to refer to Section 39 of the Specific Relief Act which reads as under:-

> **"Section 39: Mandatory Injunctions-** When to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."

It is clear from the perusal of Section 38 and 39 of the Specific Relief Act that under what circumstances and conditions perpetual injunctions and mandatory injunctions could be granted by the Civil Courts while Section 41 deals with the provisions, under which no injunction could be granted. It appears that specific provisions have been made in the Specific Relief Act regarding grant and refusal of inunctions.

In the civil cases issues are framed, such as whether the suit is barred by section 38 or section 41 of the Specific Relief Act and finding on these issues have been a binding effect on the merit of the case. Therefore, it is quite clear that the above clause (a) is just a repetition of Section 38 and 41 of the Specific Relief Act which is not required. If clause (a) is omitted from the State amendments then it shall have no adverse effect on the working of the Civil Courts, since they have to follow the norms and procedures as laid down by the different statutes as well as law laid by the Supreme Court and the High Court.

Therefore, since similar provisions have already been provided in the Specific Relief Act, no separate provision causing duplicity was required. Hence, clause (a) of the proviso to sub rule (2) of Rule 2 of Order 39 of the Code of Civil Procedure being redundant may be omitted.

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CHAPTER IV

Restricting Injunction in Service matters

Clause (b) of the proviso to sub-rule (2) of Rule 2 of Order XXXIX does not permit a civil court 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 employee including any employee of the Government.

Civil Courts deal with civil rights of the persons and they can grant relief only if a legally recognized right of a person is infringed. The sources of right in employment are generally contract, custom and statute.

The dismissal of an employee from service can be contested on two counts, viz.

1. A breach of contract, on the ground that a legally recognized right under a contract has been violated.

2. As a tortuous act inasmuch as it results in injury to the feelings and sentiments of the servant and also it bar his future employment.

Wrongful dismissal in tort and wrongful dismissal in breach of contract are separate things. A claim for tortuous relief is to be made under the Law of Torts. Employee cannot seek reinstatement from Civil Courts, it is

clear that a mere declaration that the order terminating the services is wrongful will not serve any useful purpose because even if such a declaration is granted, it will neither amount to decree for reinstatement, nor to a decree for payment of damages. "Even if there is a wrongful dismissal the contract of service cannot specifically be enforced. Ordinarily no suit for declaration will lie in the absence of violation of statutory rules or under Labour Law." [(Principal & Secretary, Maulana Azad College of Technology, Bhopal vs. Nathuram Pandey 1972 LAB IC 1952 (MP HC)]. "Generally the contract of personal employment is not enforceable by specific performance except under industrial low or when termination contravenes Article 311 or provision of any statute" **[Calcutta Electric Supply Corporation Ltd. vs. Ram Ratan Mahanto), (1975) I LLJ 94 (CAL HC)].**

With reference to clause (b) it is found that there are different enactments in respect of service matters which have specifically or impliedly barred the jurisdiction of civil courts.

The Uttar Pradesh Public Service (Tribunal) Act, 1976 (U.P. Act no. 17 of 1976)

Section 6(1) reads as under:

No suit shall lie against the State Government or any local authority or any statutory corporation or company for any relief in respect of any

matter relating to employment at the instance of any person who is or has been a public servant, including a person specified in clause (a) to clause (f) of sub-section (4) of section 1.

Specific Relief Act, 1963

Section 14(1) (b) of the Specifi9c Relief Act, 1963 bars a suit for declaration of unlawful termination and restoration of service in case of dismissal where relationship of master and servant is governed purely by contract of employment and in such cases only damages can be awarded. However, if employment is statutory or is governed by a statute, court can declare termination null and void. **{State Bank of India and others vs. S.N. Goyal (2008) 8 SCC 92}.**

The Industrial Disputes Act, 1947 (Act no. 14 of 1947)

Section 7 makes the provisions regarding Labour Courts, and Section 7 (a) makes the provision regarding Industrial Tribunals for the adjudication of Industrial Dispute relating to any matter whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned under the act.

Though there is no provision in Industrial Disputes Act, 1947 barring expressly the jurisdiction of civil courts in relation to industrial

disputes but it has been held by the Apex Court in C.T. Nigam vs. Municipal Corporation of Ahmedabad, AIR 2002 SC 997 (1000) that the jurisdiction of the civil court is ousted impliedly try a case which could form the subject matter of an industrial dispute collectively between the workmen and their employers. Industrial Disputes Act creates a special machinery under section 33 C (2) to enforce specially created rights. Ordinary civil court cannot be therefore approached by the party.

The Trade Union Acts, 1926 (Act no. 16 of 1926)

Section 11(1) of the Trade Union Acts, deals with the appeal by any person aggrieved by any refusal of the registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration.

Section 18 deals with the immunity from civil suit in certain cases as under:-

(1) No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any (Office-bearer) or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or

employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortuous act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by the executive of the Trade Unions.

The Administrative Tribunal Act, 1985 (Act no. 13 of 1985)

To provide for the adjudication or by the Administrative Tribunal of disputes and complaint with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State or any local or other authority within the territory of India or under the control of Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323A of the Constitution and for the matter connected therewith or incidental thereto.

Section 14 of the Act 13 of 1985 deals with the jurisdiction, powers and authority of the Central Administrative Tribunal, Section 15 deals with the jurisdiction, powers and authority of State Administrative

Tribunal while section 16 deals with the jurisdiction, powers and authority of a Joint Administrative Tribunal.

Section 28 which deals with the exclusion of jurisdiction of courts except the Supreme Courts under Article 136 of the Constitution, runs as follows:

> "On and from the date from which any jurisdiction, powers and authority become exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except-
>
> (a) The Supreme Court; or
>
> (b) Any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force,
>
> Shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

The above various provisions of different enactments regarding service matters of State Government as well as Central Government

employees and Industrial Establishment reveal that specific provisions regarding service matters have been made vide different enactments by the Central Legislature as well as State Legislature. In such circumstances, the aforesaid clause (b) of the proviso to sub-rule (2)of Rule 2 of Order 39 being redundant requires to be omitted.

More so, clause (b) of the proviso to sub-rule (2) of Rule 2 of Order 39 refers to the stay of the operation of the order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from any employee including any employee of the Government. In the present context, the words “from any employee” referred to in the aforesaid clause (b) denotes an employee of a private concern also and if such concern employee wants to move the court being aggrieved by any such acts of the employer referred to in the aforesaid clause (b) though he can file a civil suit and in that civil suit a final judgment and decree can be ultimately passed by the court, but cannot avail the benefit of the provisions of Order XXXIX Rule 1 & 2 of the Code due to the aforesaid bar resulting the civil suit virtually becomes infructuous after a lapse of several years. Thus, the whole exercise amounts to depriving the individual employee of his fundamental constitutional right guaranteed under Article 14, 16 and 21- Right to livelihood, Right to work, Right to Life, **(AIR 1997 SC 645).**

Therefore, the aforesaid clause (b) of the proviso to sub-rule (2) of Rule 2 seems to be against the principle of natural justice. In such circumstances the aforesaid clause (b) of the proviso to sub-rule (2) of Rule (2) of Order XXXIX of the Code requires to be omitted.

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CHAPTER-V

Restricting Injunction in departmental proceedings

Clause (C):- To stay any disciplinary proceeding pending or intended or, the effect of any adverse entry against any employee of the Government or.

Clause (C) of the proviso to sub-rule (2) of Rule 2 of Order 39 does not permit a civil court to stay any disciplinary proceeding pending or intended or, the effect of any adverse entry against any employee of the Government. In view of the above discussions as made under clause (b) of the proviso to sub-rule (2) of Rule 2 of Order 39, with regard to service matter of an employee is concerned, whether he is an employee of the State Government or Central Government or the employee of the Industrial Establishment, provisions of clause (c) are also governed by the same way. Hence clause (c) of the proviso to sub-rule (2) of Rule 2 of Order 39 is also found to be redundant and may also be omitted.

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CHAPTER-VI

Restoring power to issue Injunction

Clause (d) of the proviso to sub rule (2) of Rule 2 of Order XXXIX which restricted the power of the civil court to issue injunction, read, “to effect the internal management or affairs of any education institution including a University, or a Society, or”, has already been omitted by the Uttar Pradesh Civil Laws (Amendment) Act, 1991 (U.P. Act 17 of 1991). Hence in these maters the civil court has the power to issue injunction orders.

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CHAPTER VII

Restricting/barring Injunction in Election matters

Clause (e) of the proviso to sub rule (2) of Rule 2 of Order 39 does not permit a civil court to restrain any election.

In this context, it would be appropriate and proper to discuss the relevant provisions provided under the Constitution of India regarding election matters which are as under:

Part IX of the Constitution of India makes the provisions regarding electoral matters to the Panchayats under which Article 243-O provides as under:

"Article 243-O. Bar to interference by courts in electoral matters- Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243 K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question by an election petition presented to such authority and in such manner

as is provided for by or under any law made by the Legislature of a State.]"

Part IX A of the Constitution of India makes the provisions regarding to electoral matters to the Municipalities under which Article 243-ZG provides the provision which reads as under:

"Article 243-ZG. Bar to interference by courts in electoral matters; Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-ZF shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a State.

The Representation of the People Act, 1950 (Act No. 43 of 1950)

It is enacted by the Parliament to provide the allocation of seats in and the delimitation of constituencies for the purpose of election to the House of the People and the Legislature of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of

Union Territories, and matters connected therewith. Section 30 of the Act bars the civil court jurisdiction which runs as follows:

> "Section 30. Jurisdiction of civil courts barred-No civil court shall have jurisdiction-
>
> (a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for a constituency; or
>
> (b) to question the legality of action taken by or under the authority of an electoral registration officer, or of any decision given by any authority appointed under this Act for the revision of any such roll.

The Representation of the People Act, 1951 (Act No. 43 of 1951)

It is enacted by the Parliament to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, and corrupt practices and the offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

Part VI of Act 43 of 1951 deals with the dispute regarding elections.

Chapter II of part VI deals with the presentations of election petitions to High Court. Section 80 (a) (1) makes the provision that, “The court having jurisdiction to try an election petition shall be the High Court” while section 170 of the said Act specifically barred the jurisdiction of civil courts. It reads as under:

> “Jurisdiction of Civil Courts Barred; No civil court shall have jurisdiction to question the legality of any action taken or any decision given by the returning or by any other person appointed under this act in connection with an election.”

The above provisions of the Constitution of India and Representation of People Act specifically barred the jurisdiction of civil courts in respect of election matters. Under these circumstances clause (e) of the proviso to sub rule (2) of Rule 2 of Order 39 is also redundant and it may also be omitted.

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CHAPTER VIII

Restricting Injunction in business matters

Clause (f) of the proviso to sub rule (2) of Rule 2 of Order 39 does not permit a civil court to restrain any auction intended to be made or the effect of any auction made, by the Government unless adequate security is furnished.

It is general perception that to recover the dues if any auction proceeding is drawn to execute the orders of the court or a competent authority or to fulfill the requirement of the law, aggrieved person of high status can easily obtain an unconditional injunction order against it on frivolous ground to frustrate the purpose, while the property of a person of ordinary status is auctioned as he could not easily approach the court or have no means to engage a good lawyer to get the injunction order. To avoid this situation and maintain the equability, and faith among the public at large in the court, such condition has been imposed that, “unless adequate security is furnished, any auction intended to be made or, the affect of any auction made, by the government, shall not be restrained by an injunction order.”

In such circumstances since it is in the nature of general importance, this provision should be retained.

CHAPTER IX

Restricting Injunction in matters pertaining to land revenue

Clause (g) of the proviso to sub rule (2) of Rule 2 of Order 39 does not permit a civil court to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished.

Generally it is observed that after taking loans from the Banks or Societies or Governmental institution/agencies or any other dues of the government, people either do not deposit the regular installment of the loan or repay the dues in time or never deposit the debt amount consequently it is accumulated with interest, when recovery proceeding is drawn as land revenue debtor approached the court to obtain the injunction order on frivolous ground, sometimes they succeed also, some debtors try to windup their establishment also to evade the dues, due to heavy loss or imbalance in financial institutions they are on the verge of collapse. To streamline the system and strengthen the financial institutions/ agencies Government took certain measures in this regard to maintain the faith among the public at large in judicial system and to maintain uniformity. One of them is, “unless adequately security is furnished the proceedings for the recovery of any dues recoverable as land revenue shall not be stayed by an order for injunction.”

In view of this as it is also of general importance, this provision should also be retained.

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CHAPTER-X

Restricting Injunction in matters pertaining to Universities/Colleges.

Clause (h) of the proviso to sub-rule (2) of Rule 2 of Order 39 provides as under:

> "In any matter where a reference can be made to the chancellor of a University under any enactment for the time being in force."

From the above discussion, it is clear that clause (d) which was inserted by the U.P. Amending Act No. 57 of 1976 with other clauses read, "to affect the internal management or affairs of any educational institution including a University or a society" which has already been omitted by U.P. Act No. 17 of 1991, is somewhat analogous to the clause (h). It means that in the matters of said omitted clause (d), order for injunction may be granted while under clause (h) certain restrictions are imposed which appears to be self contradictory. In this regard, relevant provisions of the U.P. State University Act, 1973 (U.P. Act No. 10 of 1973) which already bar the suit are noticed. Sub-section (5) of Section 68-A and Section 69 of the U.P. State University Act reads as under:

> "(5) No suit shall lie against any management or teacher in respect of any matter of which a relief can be granted by the Vice-Chancellor under this section."

It is also noted that Section 69 of the U.P. State University Act also bars a suit which reads as under:

> "No suit or other legal proceedings shall lie against the State Government or the Director of Education (Higher Education) or the Deputy Director (as defined in Section 60-A) or the authorized controller or the university or any officer, authority or body thereof in respect of anything done or purported or intended to be done in pursuance of the Act or the rules or the Statutes or the Ordinances made there under."

In view of the above provisions jurisdiction of civil courts has been ousted. Clause (h) reads that "No such injunction shall be granted in any matter where a reference can be made to the Chancellor of a University…..". In this regard provision under Section 68 of the U.P. State University Act speaks that a reference shall be made to the Chancellor in the matters mentioned therein. Civil Courts are bound to observe the above provisions while dealing with such cases. Moreover when jurisdiction of Civil Court has been ousted vide sub section (5) of Section 68-A and Section 69 (inserted by U.P. Act No. 21 of 1975) while dealing with the cases of Universities, question of issuance of an order of injunction by civil court does not arise. Secondly, when clause (d) and (h) are analogous and clause (d) has already been omitted then to maintain the

uniformity and to avoid contradictory situation, in the opinion of the Commission it becomes necessary to omit the clause (h) as it is redundant. Hence clause (h) of the proviso to sub rule (2) of Rule 2 of Order XXXIX of the Code may be omitted.

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CONCLUSION:

We are fortified in this view by the observations made in the case of Naresh Chandra (Supra) wherein at para 54 the Hon'ble High Court has observed as thus;

> "Only in two States of the nation such a restraint is operating upon the subordinate Courts. In Uttar Pradesh since 1977 and in Madhya Pradesh since 1984. The question is not on the constitutionality of the matter but the ultimate effect such legislation has on the confidence of the subordinate judiciary. Is their discretion or quality of justice in question? Then, over the course of years the amendment in certain matter is redundant. An injunction in the matter of services under the State is only one of academic discussion. The establishment of the U.P. State Administrative Tribunals and the Central Administrative Tribunals have rendered the institution of a suit in matters of services difficult. Insofar as the Central Administrative Tribunals are concerned even matters pending at the High Court have been transferred to those tribunals as a whole. Again, in reference to Universities or educational institutions affiliated to it a suit itself against the State Government or certain officers of the State, or the University, its officers or

> authority, is in any case barred under the U.P. State Universities Act, 1973. All this clearly shows that the restriction to consider and grant an injunction under Order 39 Rule 2 as applies in this State lies on the Code, only to cast an aspersion on our subordinate judiciary that it is either not competent to consider such inunctions or not to be trusted in granting them. The rejection of its seems to suit the spirit of this legislation. The sooner this amendment as is applicable in this State is recalled, the faith in our subordinate Court will be restored.

It may also be noticed that in the case of falsehood and fraud by a party to a litigation, any court has a power inherent to protect itself and further stall the perpetuation of fraud. Nicety of Law and the Courts reception to it are for those who come clean. Such parties may seek redressal of actionable claims and the academics of legal or statutory interpretations. Parties harbouring falsehoods and deceit are to be shown the door of court. This is for the protection of the court; otherwise the people will lost faith in a public justice system when in the face of fraud the courts will listen to judicial polemics. It is also experienced that the State Legislation in any case has turned out to be a counter-productive exercise by flooding the High Court with writ proceedings. Whenever an

injunction may have been denied in a suit, but for the amendment to Order 39 Rule 2 of the Code of Civil Procedure, the presence has come on the writ jurisdiction of the High Court.

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CHAPTER XII

Suggestion and Recommendations

In the light of above discussions, we are of the view that in the First Schedule to the Code of Civil Procedure, 1908 clause (a) (b) (c) (e) and clause (h) of the proviso to sub-rule 2 of the Rule 2 of Order 39 may be omitted. In this regard, necessary amendments in the Code of Civil Procedure, 1908 may be made. (Proposed amendment Bill is annexed as Annexure No. 1).

(Justice V. C. Misra)
Chairman

(V.K.Mathur)	**(Prof. Balraj Chauhan)**	**(Ishwar Deyal)**
Ex-Officio Member	**Part Time Member**	**Full Time Member**

Proposed Amendments in Proviso to Sub-rule (2) of Rule 2 of Order XXXIX of the Code of Civil Procedure, 1908

MODEL

THE UTTAR PRADESH CIVIL LAW (AMENDMENT) BILL-2008

further to amend the Code of Civil Procedure, 1908 in its application to Uttar Pradesh.

IT IS HEREBY enacted in the fifty ninth year of the Republic of India as follows

Short title, Extent and Commencement

1. (1) This Act, may be called the Uttar Pradesh Civil Law (Amendment) Act, 2008

(2) It shall extend to the whole of Uttar Pradesh.

(3) It shall come into force on such date as The State Government may by notification appoint in this behalf.

Amendment of Order XXXIX or First Schedule of Act, 5 of 1908

2. In the First Schedule to the Code of Civil Procedure, 1908 in Order XXXIX, in Rule 2, in sub-rule 2, in the proviso, Clause (a), Clause (b), Clause (c), Clause (e) and Clause (h) shall be omitted.