

INHERENT POWERS OF COURTS UNDER CIVIL PROCEDURE CODE

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ABSTRACT

Courts duty to do justice in all cases, whether provided for or not, carries with it the necessary power to do justice in the absence of express provision. This power is referred to as the inherent power possessed by the court, though not conferred. Sec 151 of the Civil Procedure Code deals with the inherent powers. This provision being a part of procedural law requires a liberal interpretation to advance the cause of justice and further it ends or to effect enforcement of substantive rights. The inherent powers are considered necessary to do the right and undo the wrong in the course of administration of justice and to be regarded as 'supplementary to specially conferred powers. Inherent powers have roots in necessity and they are co-extensive with necessity in order to do complete justice.

KEYWORDS

Inherent powers, Justice, Fair Use, Administration of Justice, Restrictions, Vested Powers,

INTRODUCTION

Law has always been an essential element of society. It was there even when men was uncivilized and it is even today when we have entered into much sophisticated world. The presence of law is made much known to us with the existence of courts. The Courts existed when there was no written statute on the fundamental principle to do justice and to peacefully settle the matter. They are not as old as law but law got a recognition by courts only. They hold a very high position in society by virtue of its duty to do justice between the parties. Every court is constituted for the purpose of administering justice between the parties and, therefore must be deemed to possess all such powers as may be necessary to do the right and to undo the wrong in the process of administering the justice. The Code of Civil Procedure is a procedural or adjective law and the provisions thereof must be liberally construed to advance the cause of justice and further its ends since the basic function of the courts is to do justice rather than focusing on the procedural part of the parties.

The Code of Civil Procedure acknowledges the powers along with limitations on the courts but there are some powers which are vested in the court but not prescribed in the code and those are the Inherent powers. The inherent powers of the court are in addition to the powers specifically conferred by the code on the court. They are complementary to those powers. The court is free to exercise them for the ends of the justice or to prevent the abuse of the process of court. The main aim of this study is to find out the relevant sections dealing with inherent powers of court under CPC, to analyse how the court exercise its inherent powers, to find out the scope of inherent powers exercised by the court under section 151 of the CPC, to understand what are the limitations of the inherent powers of the court.

RESEARCH METHODOLOGY

The paper is based on Doctrinal Research Methodology and it is primarily based on Articles, Bare Acts, Books etc and the secondary sources include websites and commentaries on landmark judgements.

INHERENT POWER: MEANING

The word “Inherent” is very wide in itself. It means existing and inseparable from something, a permanent attribute or quality, an essential element, something intrinsic, or essential, vested in or attached to a person or office as a right of privilege. Hence, inherent powers are such powers which are inalienable from courts and may be exercised by a court to do full and complete justice between the parties before it.

1)RELEVANT SECTIONS OF INHERENT POWERS UNDER CIVIL PROCEEDURE CODE

There are many sections in the CPC that provides for the same.

Section 148 of CPC

Enlargement of time:- Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period [not exceeding thirty days in total], even though the period originally fixed or granted may have expired.

Section 148-A of CPC

Right to lodge a caveat:- (1) Where an application is expected to be made, or has been made, in a suit or proceedings instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be, made, under sub-section (1).

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| <u>(3)</u> | Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator. |
| <u>(4)</u> | Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application. |
| <u>(5)</u> | Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period. |

Section 149 of CPC reads:

Power to make up deficiency of Court-fees:- Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

Section 150 of CPC reads:

Transfer of Business:- Save as otherwise provide, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

Section 151 of CPC

Saving of inherent powers of the code:- Nothing in this code shall be deemed to limit or otherwise effect the inherent powers of the court to make such orders as may be necessary for the ends of the justice or to prevent abuse of the process of the court.

Section 152 of CPC

Amendment of judgements, decrees or orders:- Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

Section 153 of CPC

General powers to amend:- The Court may at any time and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit, and all necessary amendments shall be made of the purpose of determining the real question or issue raised by or depending on such proceeding.³

Section 153-A of CPC

Power to amend decree or order where appeal is summarily dismissed:- Where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance.

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Section 153-A of CPC
Civil procedure code 1908

EXERCISE OF INHERENT POWERS BY THE COURT

Principle

In the cases where the C.P.C does not deal with, the Court will exercise its inherent power to do justice. If there are specific provision of the C.P.C dealing with the specific issue and they expressly or by basic implication, then the inherent powers of the Court cannot be invoked as inherent powers itself means those which are not specified in C.P.C.

The section confers on the judges to make such orders that may be necessary to make justice achievable. The Power can be invoked to support the provisions of the code but not to override or evade other express provisions as C.P.C. is the basic law which governs the functioning of the courts.

Judicial Interpretations

Alternative for 'No other remedy:

In the absence of any special circumstances which amount to abuse of the process of the Court, it cannot grant a relief in exercise of its inherent power when the justice can be served by another remedy is available to the party concerned provided by the Code .

No Powers over the Substantive Rights:

The inherent powers saved by s. 151 of the Code are not over the substantive rights which any litigant possesses. Specific powers have to be conferred on the Courts for passing such orders .

In Ram Chand and Sons Sugar Mills v. Kanhayalal : the SC held that the Court would not exercise its inherent power under S.151 CPC if it was inconsistent with the powers expressly or impliedly conferred by other provisions of Code. It had opined that the Court had an undoubted power to make a suitable order to prevent the abuse of the process of the Court.

The Apex Court in M/s Jaipur Mineral Development Syndicate v. The Commissioner of I.T, has maintained that the Courts had power under Section 151, in the absence of any express or

implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the Court.

To Advance Interests of Justice:

In M/s. Ram Chand & Sons Sugar Mills Pvt. Ltd. Barabanki (U.P.) v. Kanhayalal Bhargava, the appellant contended that during the pendency of the first suit, certain subsequent events had taken place due to which the first was not fruitful and in law the said suit could not be kept pending and continued solely for the purpose of continuing an interim order made in the said suit. While examining the question the Supreme Court was to consider whether the court can take cognizance of a subsequent event to decide whether the pending suit should be disposed or not. The question arose was whether, a defendant could make an application under Section 151 CPC for dismissing the pending suit on the ground that the said suit has lost its cause of action. The Court upheld the contention.

Restoration of Money Suit–

Bahadur Pradhani v. Gopal Patel. In this case the plaint of a Money Suit was rejected for non-payment of deficit court fee within the time granted by the court. The plaintiff filed a petition under Section 151, C.P.C. for restoration of the suit in the ends of justice. The court allowed the petition and the suit was restored to file. This Court examined the scope of the inherent powers of the Court and expressed that the provisions of the Code do not control the inherent powers of the court by limiting it or otherwise affecting it. It is a power inherent in the court by virtue of its duties to do justice between the parties before it.⁴

When there is no scope for getting any relief:-

It was held in the case of Manoharlal v. Seth Hiralal that the provisions of the Code are not exhaustive as the legislature is incapable of contemplating all possible circumstances which may arise in future litigation.

Enlargement of Time: Section 148

⁴ <http://www.legalservicesindia.com/article/1736/The-Inherent-Powers-of-the-Court.html>

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2758064

The court has power to enlarge the said period even if the original period fixed has been expired. Where the court in exercise of its jurisdiction can grant time to do a thing, in the absence of the specific provision to the contrary, denying or withholding such jurisdiction, the jurisdiction to grant time would include in its ambit the jurisdiction to extend time initially fixed by it. This power is discretionary and so the court is entitled to take into account the conduct of the party praying for such extension. The party cannot claim this power as their right.

In the words of J. Hidayatullah, “conditional orders are not like the laws of Medes and Persians”. As J. Desai states, “the danger inherent in passing conditional orders becomes self-evident because that by itself may result in taking away jurisdiction conferred on the court for just decision of the case. The true purpose of conditional orders is that such orders merely create something like a guarantee or sanction for obedience of the court’s order but would not take away the court’s jurisdiction to act according to the mandate of the statute or the relevant equitable considerations if the statute does not deny such considerations”.

Payment of Court Fees: Section 149

The Section 149 of the Code authorizes the court to allow a party to make up the deficiency of court fees payable on a plaint, memorandum of appeal, etc. even after the expiry of the period of limitation prescribed for filing of such suit, appeal etc. Under the provisions of S. 149, C.P.C., as a practice, the courts grants time for payment of the court-fee on coming to an adverse conclusion on a pauper application. Section 4 of the Court Fees Act, 1870 provides that no document chargeable with court fee under the act shall be filed or recorded on any court of justice, unless the requisite court fee is paid.

Amendment of Judgement, Decrees, Orders and other Records: Sec. 152, 153-153A

Sec. 152 of the Code of Civil Procedure endorses that clerical or arithmetical mistakes in judgements, decree or orders arising from any accidental slip or omission may at any time be corrected by court suo motu or on application of any other parties. The section is based upon two essential principles:

1. It is duty of the court to see that their records are true and they present the correct state of affairs.
2. An act of court should not prejudice any party

THE SCOPE OF INHERENT POWER EXERCISED BY THE COURT UNDER SECTION 151 OF THE CPC

More than seven decades back, the Privy Council in the case of Emperor v. Khwaja Nazir Ahmed, observed that Section 561A (corresponding to Section 482 of the Code) had not given increased powers to the Court which it did not possess before that section was enacted. It was observed

“The section gives no new powers, it only provides that those which the court already inherently possess shall be preserved and is inserted lest, as their Lordships think, it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of the Code.”

In the very recent verdict of K.K. Velusamy v. N. Palaanisamy, the Hon’ble Supreme Court upheld that Section 151 of the Code recognizes the discretionary power inherited by every court as a necessary corollary for rendering justice in accordance with law, to do what is ‘right’ and undo what is ‘wrong’.

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The Court summarized the scope of Section 151 of the CPC as follows:

(a) Section 151 is not a substantive provision which confers any power or jurisdiction on courts. It merely recognizes the discretionary power of every court for rendering justice in accordance with law, to do what is ‘right’ and undo what is ‘wrong’, that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

⁵ <http://www.aaptaxlaw.com/CRPC/section-482-483-484-crpc-saying-inherent-powers-high-court-duty-to-exercise-continuous-superintendence-over-%20courts-jm-repeal-savings-sec-482-483-484-of-code-of-criminal-procedure-1973.html>

<https://lawrato.com/civil-legal-advice/what-are-the-laws-of-maharashtra-govt-under-cpc-47137>

(b) The provisions of the Code are not exhaustive; section 151 says that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used by the court to deal with such situation, to achieve the ends of justice, depending upon the facts and circumstances of the case.

(c) A Court has no power to do things which is prohibited by law or the Code, in the exercise of its inherent powers. The court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is expressly provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them and the court should exercise it in a way that it should not be in conflict with what has been expressly provided in the Code.

(e) While exercising the inherent power, there is no such legislative guidance to deal with those special situations of the case and so the exercise of power depends upon the discretion and wisdom of the court, and also upon the facts and circumstances of the case. So, such consequential situation should not however be treated as a carte blanche to grant any relief.

(f) The power under section 151 will have to be used with care, only where it is absolutely necessary, when there is no provision in the Code governing the matter or when the bona fides of the applicant cannot be doubted or when such exercise is to meet the ends of justice and to prevent abuse of process of court.

LIMITATIONS

- i) They can be exercised only in the absence of express provisions in the code
- ii) They cant be exercised in conflict with expressly provision in the code
- iii) They can be exercised in exceptional cases
- iv) While exercising the powers, the court has to follow the procedure prescribed by the legislature

- v) Courts cannot exercise jurisdiction not vested in them by law;39 vi) To abide by the doctrine of Res Judicata i.e., not to open the issues which have already been decided finally
- vi) To direct an arbitrator to make an award afresh
- vii) Substantive rights of the parties shall not be taken away
- viii) To restrain a party from taking proceedings in a court of law
- ix) To set aside an order which was right at the time of its issuance.

CONCLUSION

It cannot be expected that the legislator will be capable in forming of the Code of Civil Procedure of foreseeing every possible situation which may arise or of creating an exhaustive list of circumstances in which an existing provision may apply. To counter the situations of abuse of the process of the court, certain inherent powers have been recognized to be vested with the courts. This is to meet the ends of justice and equity in cases where provisions of law are not explicit or applicable. Such powers have also been granted to the court to assist in obtaining the motive of avoiding the abuse of the process of the court as it one of the most substantial duties of the court. Though, this power of the court is not unduly far-reaching and unrestricted. S.151 which gives legislative recognition to inherent powers is restricted by certain construction the section where the court cannot exercise its powers when provision for any action or matter is explicitly prohibited by the Code or any other statute; or where there exists a provision of the Code applicable to the matter at hand. Through an analysis of the various case laws it has been established that inherent powers must be exercised only for the ends of justice or to prevent abuse of the process of court as long as it is not in contravention of any other existing law or provision.

Under the Indian judiciary, a codified statute such as the Code of Civil Procedure aims at making the judicial process uniform and unbiased. Working in this view the legislative process takes due cognizance of the fact that not all situations can be pre-empted and it holds good for even for their procedures to be followed. S.151 is in essence validates this fact by recognising the courts

ability in granting justice in even those situations where the Code of Civil Procedure or any other statute is not applicable and or finds itself unequipped to render proper justice and avoid misuse of the process of the court, if any.

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