

DETERMINATION OF INHERENT POWERS OF COURT

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ABSTRACT

This paper deals with the inherent powers of the civil courts and to find out whether those inherent powers had been used in uniform and unbiased manner. 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:

1. Inherent power
2. Civil procedure code

3. Justice
4. Civil court

To Study the Inherent Powers of Court.

INTRODUCTION

In civil procedure code ,under section 148 to 153 the inherent powers to the court had been given. The age-old and well-established principle that every court has power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists. Also, it has an inherent duty to prevent abuse of the existing processes of the court. The Code of Civil Procedure is not exhaustive , the reason for this being that the legislature is incapable of pre-empting all possible circumstances which may arise in future litigation, and consequentially for providing the procedure for the same. The court has, therefore, in many cases, where the circumstances so require, acted upon the assumption of possession of inherent power. ([Sarda 2016](#)) This well established principle receives legislative recognition in Section 151 of the Code of Civil Procedure which states that:

S. 151. Saving of inherent powers of the Court.- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

The section does not confer any powers, but only indicates that there is a power to make such orders as may be necessary for achieving the ends of justice, and also to prevent an abuse of the process of the court. The court is not powerless to grant relief when the ends of justice and equity so demand, because the powers vested in the court are of a wide scope and ambit. The Supreme Court in the case of *Raj Bahadur Ras Raja v Seth Hiralal* observed that ‘the inherent power has not been conferred on the court; it is a power in the court by virtue of its duty to do justice between the parties before it’.

But, this power of the court is limited to the extent that it cannot be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred under the Code. If there are express provisions exhaustively covering a

particular topic, that give rise to a necessary implication that no power shall be exercised in respect to that topic in any manner other than that prescribed by the said provision. Further, the power under S.151 cannot be exercised as an appellate power and it cannot be invoked to pass administrative and ministerial orders.

In the subsequent chapters an effort will be made to understand when inherent power can be exercised and when not; when invocation of the section is proper and when it is not; a few specific cases where S.151 finds application. An analysis in these areas will be made in context of existing case law. To analyze the inherent powers of court. To find out, that the inherent powers of court are uniform and unbiased. To know about, whether that principle of natural justice had been followed. To clarify that, the inherent powers are exercised only for the end of justice. To analyze that, the inherent power of court are made to prevent abuse of process of the court. The aim is to study the Inherent Powers of Court.

RESEARCH METHODOLOGY

The researcher has adopted *doctrinal* method of research and the entire paper is in the form of analysis of the established procedures, thereby following *analytical* mode of research. The primary sources for this research paper are the civil procedure code, 1908 and relevant judicial decisions. Secondary sources include books, articles and web sources.

HYPOTHESIS:

The inherent powers of court is doing full and complete justice between the parties.

CHAPTER 1

INHERENT POWERS OF COURT

Courts are set up to redress to the plethora of issues that are bound to crop up when people live together in a country as vast as ours. They are given authority by the laws of our country which guide and limit them. Yet, no matter how well and minutely codified our laws may be, it is not humanly possible to account for every eventuality and in order to not let this very obvious tautology interfere with the meting out of justice efficiently and effectively, the Code of Civil

Procedure, which regulates the procedural aspect of all civil litigation, has been provided with the dimension of inherent powers of the court.

Section 148 to 153 provide for the said inherent powers, which come to the rescue in case of any unforeseen circumstances. They are complementary to the powers otherwise specifically conferred by the Code of Civil Procedure and the court is free to exercise them for the ends of justice or to prevent the abuse of the process of the court by virtue of an obligation to provide justice (ex debito justitiae) in the absence of express provisions of the Code.

Section 148 of CPC reads: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.

Case law: Gowri ammal vs Murugan, Anbu, Sekar and Saroja 25 april,2006

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.

Case law: K.Selvam vs S.Murugan 24th march,2008

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.

Case law: Subramanya Iyer vs Swaminatha Chettiar and anr.on 17th feb, 1928

Section 151 of CPC reads:

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.

Case law: G. Anandam and ors vs. The Warangal Municipal ,11th September,1996

Section 152 of CPC reads:

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.

Case law: Swapan Kumar Sharms vs Namita Chakraborty 20th feb, 2007

Section 153 of CPC reads: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.

Case law: C. Raju and ors. Vs Dinshaji Dadabhai Itahir and anr. On, 1960

Section 153-A of CPC reads:

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.

CHAPTER 2

INHERENT POWER WHEN CAN BE EXERCISED

There are two major objectives the court must take into consideration while exercising inherent powers recognised under S. 151. Firstly, the powers are to be exercised only for the ends of justice and secondly, to prevent abuse of process of the court. The powers are not to be exercised when prohibited or excluded by the Code or other statutes as well as in situations when there exist specific provisions in the Code applicable to the litigation at hand. In this chapter an attempt will be made to analyse each of these aspects in some detail.

2.1 TO BE EXERCISED ONLY FOR THE ENDS OF JUSTICE

Courts have inherent power to pass interim orders for ends of justice or to prevent failure of justice. It has been observed by the Supreme Court that the interests of justice are the prime consideration in granting or not granting prayers in a petition under S.151 and no rule or procedure can curtail that power of the court. Where the order of the court below is in the interest of justice, the higher court can refuse to interfere under S.115, even if the court below has no jurisdiction to pass such an order. ([Sarda 2016](#); [Zhenetl and Russian State University ...](#); [Cardozo 2012](#)) The interference in revision is discretionary and should be used only in interest of justice and not in a case where interference is not in the interest of justice. Illustrations of this principle can be found in judgments such as the Patna High Court holding that, the fact that the dismissal could be reviewed or revised under O 47, should not come in the way of exercising power under this section. Likewise, interference on the grounds of safeguarding the rights of the minor as envisaged by S.31 of the Guardians and Wards Act 1890 was held necessary. The court can also interfere, in the interest of justice, with an order especially an ex parte order, which has been issued through its mistake, even suo motu. Like, any other case even in such situation the court cannot grant a relief under inherent jurisdiction, if the same relief can be granted by another court, under an express provision of the Code.

2.2 TO PREVENT ABUSE OF PROCESS OF THE COURT

According to Mulla the words ‘abuse of process of courts’, is defined as follows:

Abuse of process of court, is the malicious and improper use of some regular legal proceedings to obtain an unfair advantage over an opponent. Nothing short of obvious fraud on the part of a debtor would render him liable to have his petition for insolvency dismissed on the grounds of 'abuse of process of court. The term is generally used in connection with action for using some process of court maliciously to the injury of another person.[\(Schmidt and Cohen 2013\)](#)

The High Court has inherent power under S.151, under Letters patent, and under Art. 215 of the Constitution to prevent the abuse of its powers. It is an abuse of the process of the court when the facts germane to the issue were either not disclosed to the court or were misstated. However, inaccurate facts must be such as to enable the plaintiff to obtain the relief which he would not have gotten had he disclosed the correct facts. But inaccuracies which did not have such a result would not be sufficient to dismiss the cause.

Where the court is bound to grant an application, and has no discretion to refuse it, it has no power to dismiss it on so treacherous a ground of decision, as an 'abuse of the process of the court'. Also, where a decree of the first appellate court has become final, by its not having been interfered with in the second appeal, an application for stay of its execution cannot be granted on the ground, either of abuse of process of court or in the interest of justice, merely because a review application against such a decree is pending.

2.3 NOT APPLICABLE WHEN PROHIBITED BY THE CODE OR OTHER STATUTES

Through a plethora of judgments, it is well-settled that when a power is to be exercised by a civil court under an express provision, the inherent power cannot be taken recourse to. A court has no inherent power to do what is prohibited by the Code. Thus, a court has no power, after the judgment is signed, to alter or to add to it, as, doing so, would be in direct contravention of O 20, r 3. Further, this section does not invest in the court, jurisdiction over matters which are not in its cognisance. Thus, a court cannot under this section, entertain a suit relating purely to caste, such a suit not being of civil nature. ; or entertain a rent suit which can by special law, only be tried by a revenue court. The court also cannot ignore the provisions of law of limitations by appealing to this section. The court cannot, by exercise of its inherent powers extend the period of limitation on any grounds of equity and justice.

A remand of the entire case to the trial court for the purpose of taking additional evidence and then disposing it off according to law, would not be valid, it being in contravention of specific provisions of the CPC. Similarly, a court cannot, in the exercise of the powers under this section, compel a person to undergo a medical examination. Similarly, where the Representation of the People Act prohibits condonation in filing of a petition, the same cannot be cured by exercising the inherent powers in the interest of justice.

2.4 NOT APPLICABLE WHEN THERE ARE SPECIFIC PROVISIONS IN THE CODE

In the case of *Manohar Lal Chopra v Rai Bahadur Rao Raja Seth Hiralal* it has been held that the inherent jurisdiction of the court to make orders *ex debito justitiae* is undoubtedly affirmed by S.151 but that jurisdiction cannot be used so as to nullify the provisions of the Code of Civil Procedure. Where the CPC deals expressly with a particular matter, the provisions should normally be regarded as exhaustive.

S.151 gives inherent power to the court to make such order as may be necessary for the ends of justice or to prevent abuse of the process of the court; however same is required to be exercised by the court when there is no other statutory remedy available to parties to redress their grievances. In *Ram Chand & Sons Sugar Mills Pvt Ltd v Kanhayalal Bhargav*, the court observed that, the inherent power of the court 'is in addition to and complimentary to the powers expressly conferred, but that power will not be exercised if its exercise is inconsistent with, or comes in conflict with any of the powers expressly or by necessary interpretation conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner provided by the said provision. Whatever limitations are imposed by construction on the provisions of S.151 of the Code, they do not control the undoubted power of the court to make a suitable order to prevent abuse of the process of the court.

The inherent powers cannot be used to reopen the settled matters. These powers cannot be restored to when there are specific provisions in the Act to deal with the situation.

CONCLUSION

The legislators in forming of the Code of Civil Procedure are incapable of foreseeing every possible situation which may arise or of creating an exhaustive list of circumstances in which an existing provision may apply. In the absence of such mechanical application of law, the court has been recognised to have certain inherent power. This is to perform the functions of administering justice in cases where provisions of law are not explicit or applicable. Also in the cases where parties take unfair advantage of process of the court, it is the courts responsibility to prevent such blatant misuse. Though, this power of the court is not unduly far-reaching and unrestricted. S.151 which gives legislative recognition to 'inherent powers' also makes clear the fact that the powers can be exercised only when such action 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 various case laws an analysis has been made in this project to understand the guiding principles for the court in entertaining a matter under S.151. 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.

The judiciary forms a fundamental pillar on which a democracy such as India rests. Codified statutes such as the Code of Civil Procedure aim to make the judicial process as uniform and unbiased as possible. Yet the legislative process takes due cognisance of the fact that not all situations can be pre-empted and procedures laid down for the same. S.151 is a mere reiteration of this very fact as it recognises the courts ability in best granting justice in all those situations where the Code of Civil Procedure or any other statute is not applicable.¹

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