

Inherent Powers of a Civil Court: A Study

By

Prof (Dr) Mukund Sarda[×]

1.1. 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.¹ This power is referred to as the inherent power possessed by the court, though not conferred. Sec 151² 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.³ The inherent powers are considered necessary to do the right and undo the wrong in the course of administration of justice⁴ and to be regarded as ‘supplementary to specially conferred powers.’⁵ Inherent powers have roots in necessity and they are co-extensive with necessity in order to do complete justice.⁶

[×] Principal & Dean, Faculty of Law, New Law College, Bharati Vidya Peeth University, Pune.

¹ Per Justice Raghuvār Dayal in *Manohar Chopra Vs. Seth Hiralal*, AIR 1962 SCP.527.

² Sec 151 of Civil Procedure Code states: “Nothing in this code, shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court”.

³ *Shreenath Vs. Rajesh* AIR 1998 SC P.1192.

⁴ *State of UP Vs. Roshan Singh* AIR 2008 SC P.1190

⁵ *Mulraj Vs. Murti Raghunath Ji Maharaj* AIR 1967 SC P.1386.

⁶ *Newab Ganj Sugar Mills Vs. Union of India*, AIR 1976 SC P.1152.

1.2. The law relating to inherent powers is contained in Sec 148 to Sec 153A of the Civil Procedure Code, which visualizes the exercise of powers in different circumstances. These provisions deals as follows:-

- i) Sec 148 and Sec 149 deals with grant or enlargement of time;
- ii) Sec 150 deals with transfer of business;
- iii) Sec 151 preserves the inherent powers of the courts
- iv) Sec 152, 153 and Sec 153A deal with amendments in Judgments, decrees or orders or in other proceedings.

1.3. A detailed discussion of the above provisions (Sec 148 to Sec 153A) is taken up for study. Sec 148 of the Civil Procedure Code⁷ states that when a period is fixed or granted by the court for the doing of any act, the court has the power to enlarge such period upto 30 days. This power is exercisable in the absence of any specific provision to the contrary which curtails or denies or withholding of the period. The power is confined to extension of the time

⁷ CPC is used for Civil Procedure Code throughout this study.

fixed by it⁸ and is of a discretionary nature⁹. In other words, power of the court may be exercisable after taking into consideration factors such as circumstances of the case, conduct of the party seeking extension, alteration or modification of circumstances which necessitate the extension of time. A reading of Sec 148 clearly points out that it has no application when the time has not been fixed or granted for the doing of a particular act has not been prescribed or allowed by the court. This power of the court being of a discretionary nature cannot be claimed as of right.

Sec 149, deals with payment of court-fees. This section empowers the court to allow a party to make up the deficiency of court fees payable on a plaint or memorandum of appeal etc., even after the expiry of limitation period, provided for filing of the suit or appeal etc. Payment of requisite court fee is mandatory¹⁰ for any document chargeable with court-fee to be recorded in the court. If the requisite court fee is paid within the time-

⁸ Jagdhayan Vs. Balu Ram AIR 1983 SCP.59.

⁹ Ibid.

¹⁰ See for details Sec 4 of the Court Fees Act, 1970.

fixed by the court, it cannot be treated as time-barred.¹¹

Such payment made within the time fixed by the court retrospectively validates a defective document.¹² The power of the court is discretionary and must be exercised only in the interests of justice.¹³

Sec 150 of IPC relates to 'Transfer of business' and provides thus:- "when the business of any court is transferred to any other court, the transferee court will exercise the same power or discharge same duties conferred or imposed by CPC upon the transfer court".

Sec 151 provides that the inherent power can be exercised to secure the ends of justice.¹⁴

The scope and ambit of the exercise of powers under Sec 151 of CPC can be illustrated by a few cases as follows:-

- i) The court may recall its orders and correct mistakes;¹⁵
- ii) Issuance of temporary injunctions when the case is not covered by order 39¹⁶ or to set aside an 'ex-parte' order;¹⁷

¹¹ Mohd. Mahibulla Vs. Seth Chaman Lal AIR 1993 SC P.1241.

¹² validJagal Kis hore Vs. Dhanno Devi (1973)2 SCC P.567.

¹³ K.C. Skaria Vs. Govt. of Kerala AIR 2006 SC P.431.

¹⁴ All Bengal Excise License's association Vs. K.Raghavendra Singh, AIR 2007 SC P.1386.

¹⁵ Keshardeo Vs. Radha Kisaan, AIR 1953 SC P.23.

¹⁶ Mohanlal Chopra Vs. Seth Hiralal, aIR 1963 SCP.527.

- iii) Illegal orders or orders passed without jurisdiction can be set-aside;¹⁸
- iv) Subsequent events in the case can be take note of by the court;¹⁹
- v) Court's power to hold trial 'in camera' or prohibit publication of its proceedings;²⁰
- vi) Court can expunge remarks made against a Judge²¹ and
- vii) Court can restore the suit and rehear on merits²² and also to review its order;²³

Sec 151 of the CPC provides for exercise of inherent powers to prevent the abuse of the process of court. The abuse of the power may be at the instance of a party or at the instance of the court itself. Abuse of the powers of the court which results in injustice to party needs to be remedied on the ground that the act of a court shall not prejudice anyone.²⁴ When a party practices fraud on the court²⁵ or on a party to a proceeding,²⁶ the remedies have to

¹⁷ Martin Burn Ltd., Vs. R.N.Banerjee, AIR 1958 SC P.83.

¹⁸ Mulraj Vs. Murti Raghunathji Maharaj, AIR1967 SC P.1386.

¹⁹ Nair Service Society Ltd., Vs. K.C.Alexander, AIR 1968 SC P.1165.

²⁰ Naresh Sridhar Vs. State of Maharashtra, AIR 1967 SC P.31.

²¹ State of Assam Vs. Ranga Muhammed, AIR 1967 Sc P.907.

²² Lachi Tiwari Vs. Director of Land Records, AIR 1984 SC P.41.

²³ Shivdeo Singh Vs. State of Punjab, AIR 1963 SC P.1911.

²⁴ Forasal Vs. ONGC, AIR 1984 SC P.241.

²⁵ Baidyanath Dubey's Case 1968 SCD P.275.

be provided on the basis of inherent powers. Circumventing statutory proceedings²⁷ or resorting to multiplicity of proceedings²⁸ or by instituting vexations, obstructive or dilatory tactics²⁹ have to be prevented by use of inherent powers. Similarly, trying to secure an undue advantage over the opposite party³⁰ or introducing scandalous or objectionable matter in the proceedings have to be prevented³¹ to ensure that the process of the court is not abused.

Sec 152, 153 and 153A of CPC relates to the use of inherent power for effecting amendments of Judgments, decrees, orders or other records.

Sec 152 provides that clerical or arithmetical mistakes in Judgments, decrees or orders arising from any accidental slip or omission may at any time be corrected by the court either on its own motion or on the application of any of the parties. The apex court elucidated that Sec 152 is based on two principles:-³²

²⁶ Dadu Dayal's Case (1990)1 SCC P.189.

²⁷ See Note 23.

²⁸ See Note 19.

²⁹ Mula Vs. Balu Ram AIR 1960 ALL P.573.

³⁰ Director of Inspection Vs. Vindo Kumar, AIR 1987 SC P.1260.

³¹ Shanker Lal Vs. Ramniklal, AIR 1951 Kant P.23.

³² T.Sugar Cp. Ltd., Case AIR 1970 SC P.76 and also Samarendranath Vs. Kishore Kumar, AIR 1967 SC P.1443.

- i) the act of the court shall not prejudice any one; and
- ii) Duty of the court to ensure that its records are true and represent the correct state of affairs.

Sec 152 and 153 of the CPC makes it clear that the court may set right any mistake in their records at any time.³³

While Sec 152 is confined to amendments of Judgments, orders or decrees, Sec 153 confers a general power on the court to amend defects or errors in any proceeding in a suit.

Necessary amendments can be done in order to determine the real issues between the parties.³⁴

1.4. The exercise of inherent powers carries with it certain limitations such as:-

- i) They can be exercised only in the absence of express provisions in the code;³⁵
- ii) They cannot be exercised in conflict with what has been expressly provided in the code;³⁶
- iii) They can be exercised in exceptional cases;³⁷

³³ Janakiraman Vs. P.M.Neelakanta Iyer, AIR 1962 SC P.632.

³⁴ Jai Jai Ram Manohar Vs. National Building Material Supply, AIR 1969 SC P.1267.

³⁵ Arjun Singh Vs. Mohindra Kumar, AIR 1964 SC P.993.

³⁶ Ram Chand & Sons Vs. Kanhayalal Bhargava, AIR 1966 SC P.1890.

³⁷ Ram Karan Das Vs. Bhagwandas, AIR 1965 SC P.1144.

- iv) While exercising the powers, the court has to follow the procedure prescribed by the legislature;³⁸
- 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;⁴⁰
- vii) To direct an arbitrator to make an award afresh;⁴¹
- viii) Substantive rights of the parties shall not be taken away;⁴²
- ix) To restrain a party from taking proceedings in a court of law;⁴³ and
- x) To set aside an order which was right at the time of its issuance.⁴⁴

1.5. A summary of Sec 148 to Sec 153 B reveal that the powers of the court are quite wide and extensive for the purpose of:-

- a) minimizing litigation;
- b) avoid multiplicity of proceedings and

³⁸ Mohan Lal Chopra's case (Note 16)

³⁹ State of W.B. Vs. Indira Devi (1977) 3 SCC P.559.

⁴⁰ Union of India Vs. Ram Charan, AIR 1964 SCP.218..

⁴¹ Rikhalidas Vs. Bullabhidas, AIR 1962 SC P.554

⁴² Mohan Lal Chopras (Note 37)

⁴³ Ibid.

⁴⁴ A.C.Estates Vs.Serajuddin, aIR 1960 SC P.939.

c) to render full and complete justice between the parties.

1.6. In conclusion, it may be suggested that norms laid down by the courts in the exercise of inherent powers together with the restrictions and limitations on the exercise of the power be codified in the form of rules to be framed by the supreme court and be made available to the courts for their guidance. The rules may also provide to deal with new cases unprovided for, which arise in future.