

UPPG120006282022



Court of Civil Judge(J.D.) Lalganj, Pratapgarh

Original Suit: 198/2022

Suresh Mani Versus Rajeev Lochan Mishra & Others

Date: 26-08-2022

Case called on file presented learned counsel of both the parties were present and made arguments on application no. 16c2 and on the other hand learned counsel of defendant no. 5 has been provided reasonable amount of opportunity on application.

As application no. 16c2 presented under section 151 civil procedure code, 1908 to maintain status quo until any decision has been passed. under application 6c on the other hand learned counsel has raised objection on application 36c2 by stating that application has been supported with malafide intention and without providing reasonable amount of opportunity to all the defendants. Also stating that service of notice not seems to be sufficient to all the defendants and application is liable to the dismissal.

On perusal of application no. 16c2 along with objection 31c2.

As contemplated under section **151 of civil procedure code, 1908 "Nothing in this court 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."**

Learned counsel of both the parties has been heard and reasonable amount of opportunity has been given in order to make their representation on application as well as objection accordingly.

On perusal of application and objection certain inference can be drawn that section 151 of civil procedure code, 1908 can be only applicable if there is no alternate remedy available in accordance with the

existing provisions of Law.

Such inherent power can not override statutory provisions. A party can not find solace in section 151 to allage and rectify historic wrongs and bypass procedural safeguards in the civil procedure code. **A bench headed by hon'ble Chief Justice N.V. Ramana said.**

The exercise of inherent power carries with it certain barriers such as they can be applied only in the deficiency of particular provision in the code. They can not be applied in dispute with what has been expressly given in the code. They can be applied in rare or exceptional cases where any specific provision not provided in the code.

Section 151 of civil procedure code can not be invoked when there is express provision even under which relief can be claimed by the aggrieved parties. The inherent powers of the court are not to be used for the benefit of a litigant who has remedy under the civil procedure code. **State of U.P. And others Vs. Roshan singh (Dead) by L.Rs. And others. [2008(71) ALR] (Supreme Court)**

Thus taking into consideration the above stated facts of the application no. 16c2 and objection accordingly it has been decided that inherent power may be exercise **Ex-debito justiliae** in those cases where there is no express provision in the code. Therefore, inherent power when there is specific provision for the grant of relief can not invoked accordingly.

On the other hand from the persural of both the application on which both the learned counsel had argued it appears that service of notice on all the defendents is not sufficient and proper and without hearing all the parties no order can be passed which might derogates **principles of natural justice. (Equity, good consicence)**. Reasonable amount of opportunity should be provided to all the defendents which has been made parties to the suit.

As contemplated under **MAXIM "AUDI ALTERAM PARTEM"** means to hear the other party or no one should be condemned unheard. This rules states that both parties must have the chance to represent their view point and authorities should conduct a fair proceeding accordingly. It requires to afford reasonable amount of opportunities to all the person

which are parties to the suit.

Therefore in particular application which has been presented by plaintiff there seems that notice of service is not sufficient on all the defendants which are parties to the suit. Reasonable amount of opportunity should be provided to all the defendants those are parties to the suit. Thus application no. 16c2 liable to be dismissed and objection 31c2 decided accordingly.

ORDER

Application no. 16c2 under section 151 civil procedure code, 1908 liable to be dismissed and objection application no. 31c2 decided accordingly. Also, Plaintiff learned counsel has been directed to make service of notice through both ways in order to ensure sufficient service within week without any amount of delay. Put up on file dated 15.09.2022.

**Civil Judge(J.D.)
Lalganj, Pratapgarh**