

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.778 of 2016

Ramdin, S/o Alamsai, Caste Panika, aged about 58 years, Occupation Service in Colliery, R/o Village Sagarpur, Police Station & Tahsil Baikunthpur, District Korea (C.G.) presently residing at Village Bartunga Colliery, in front of S.E.C.L. Hospital, P.S. Chirmiri, District Korea (C.G.)

(Defendant No.1)
---- Petitioner

Versus

1. Fulamati, W/o Ramdin, aged about 52 years, Caste Panika, R/o Village Parcha Basti, Police Station & Tahsil Baikunthpur, District Korea (C.G.)

(Plaintiff)

2. Chief General Manager, Chirmiri Area, G.M. Complex Pondi, Tahsil Baikunthpur, District Korea (C.G.)

(Defendant No.2)

3. Sub Area Manager, Chirmiri Sub Area, Chirmiri, Tahsil Khadgawan, District Korea (C.G.)

(Defendant No.3)

4. Commissioner Coalmines, Provident Fund, C.M.P.F., Beside of S.E.C.L. Head Quarter, Seepat Road, Bilaspur, District Bilaspur (C.G.)

(Defendant No.2)
---- Respondents

For Petitioner:	Mr. Chandresh Shrivastava, Advocate.
For Respondent No.1:	Mr. Anurag Singh, Advocate.
For Respondents No.2 & 3:	Mr. Shailendra Shukla, Advocate.
For Respondent No.4:	Mr. Raj Kumar Gupta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

27/04/2017

1. Suit was filed by Fulamati on 22-12-2015. During the pendency of suit, on 2-9-2016, the plaintiff filed an application under Section 151 of the CPC for restraining the official respondents from disbursing

the retiral dues of the petitioner herein / defendant No.1 and for maintaining status quo. The trial Court by its impugned order restrained the official respondents from disbursing the said dues against which this writ petition has been preferred.

2. Learned counsel for the petitioner would submit that the petitioner herein is defendant No.1 in the suit, notice has been issued to him but it was not served upon him and all of a sudden, the application under Section 151 of the CPC has been allowed. He would further submit that no application under Order 39 Rule 3 of the CPC was filed and in view of the specific provision, Order 39 Rule 3 of the CPC could not have been invoked into and that too without hearing the petitioner / defendant No.1.
3. On the other hand, learned counsel for the plaintiff/respondent No.1 would support the impugned order.
4. I have heard learned counsel for the parties.
5. It is correct to say that the petitioner was not served with summons of the suit or with the notice of the application under Section 151 of the CPC which was granted. The application under Section 151 of the CPC was filed on 2-9-2016 and it has been allowed on 9-9-2016 without hearing the petitioner herein. It is not an application under Order 39 Rule 3 of the CPC.
6. Secondly, in the matter of **Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal**¹ it has been held that inherent jurisdiction of the court to make orders ex debito justitiae is undoubtedly affirmed by Section 151 of the Code, but that jurisdiction cannot be

1 AIR 1962 SC 527

exercised so as to nullify the provisions of the Code. Where the Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive.

7. Thereafter, in the matter of **K.K. Velusamy v. N. Palanisamy**², the Supreme Court after considering the earlier decisions under Section 151 of the CPC has laid down the principles as to when Section 151 of the CPC has to be invoked. It has been held that the power under Section 151 of the CPC will have to be invoked with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, such power is necessarily to be exercised to meet the ends of justice and to prevent abuse of process of court. In paragraph 10, the Supreme Court has summarised the situations where the power under Section 151 of the CPC can be exercised which are as under: -

“(a) [Section 151](#) is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary 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.

(b) As the provisions of the Code are not exhaustive, [section 151](#) recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

2 (2011) 11 SCC 275

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is 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 for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, 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 circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.”

8. The trial Court has invoked the power under Section 151 of the CPC when there is specific provision under Order 39 Rules 1 and 2 of the CPC for granting of necessary injunction and as such, the impugned order is in teeth of the decisions of the Supreme Court in **K.K. Velusamy** (supra) and **Manohar Lal Chopra** (supra) and that too without noticing and hearing defendant No.1. The trial Court

has exercised such jurisdiction which is absolutely illegal and liable to be set aside.

9. Accordingly, the impugned order is set aside. However, the plaintiff is free to file appropriate application in accordance with the provisions contained in the CPC and if such application is filed, the trial Court would proceed to decide the same in accordance with law.

10. The writ petition is allowed to the extent indicated herein-above.

No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge