

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 69 of 2021

1. Raj Kumar Agrawal, S/o Late Fattechand Agrawal Aged About 65 Years
R/o Kranti Nagar, Near Jain Mandir , Bilaspur Tahsil And District
Bilaspur Chhattisgarh.
2. Rajesh Kumar Agrawal, S/o Late Fattechand Agrawal Aged About 53
Years R/o Thursday Market Bilaspur , Tahsil And District Bilaspur
Chhattisgarh.
3. Saroj Agrawal, W/o Shri Raj Kumar Agrawal Aged About 57 Years R/o
Kranti Nagar, Near Jain Mandir , Bilaspur Tahsil And District Bilaspur
Chhattisgarh.
4. Amit Kumar Agrawal, S/o Raj Kumar Agrawal Aged About 40 Years R/o
Kranti Nagar, Near Jain Mandir, Bilaspur Tahsil And District Bilaspur
Chhattisgarh.
5. Smt. Poonam Agrawal, W/o Rajesh Kumar Agrawal Aged About 50
Years R/o Thursday Market , Bilaspur , Tahsil And District Bilaspur
Chhattisgarh.

---- Petitioners

Versus

1. Sureshchand Kumar, S/o Late Harish Chandra Aged About 64 Years
R/o Dayalband , Bilaspur , Tahsil And District Bilaspur Chhattisgarh.
2. Sudheshchand Kumar, S/o Late Harish Chandra Aged About 49 Years
R/o Dayalband , Bilaspur , Tahsil And District Bilaspur Chhattisgarh.
3. Sanjay Chand Kumar, S/o Late Harish Chandra Aged About 40 Years
R/o Dayalband , Bilaspur , Tahsil And District Bilaspur Chhattisgarh.
4. Rajendra Kumar, S/o Late Harish Chandra Aged About 37 Years R/o
Dayalband , Bilaspur , Tahsil And District Bilaspur Chhattisgarh.

5. State Of Chhattisgarh Through Collector, Bilaspur Chhattisgarh.,
District : Bilaspur, Chhattisgarh
6. Laxman Kedia S/o Purhottam Kedia Aged About 56 Years R/o Rishabh
Kunj, Vikas Nagar, Bilaspur , Tahsil And District Bilaspur Chhattisgarh.
7. Amit Kedia, W/o Laxman Kedia Aged About 54 Years R/o Rishabh
Kunj, Vikas Nagar, Bilaspur , Tahsil And District Bilaspur Chhattisgarh.
8. Arun Kumar Baghel, S/o Nanhuram Baghel Aged About 53 Years R/o
Village Singhari , Via Ratanpur, And District Bilaspur Chhattisgarh.
9. Ishwarlal Sahu D/o Doman Sahu Aged About 50 Years R/o Chatauna,
Post Hirri, Tahsil Takhatpur, District-Bilaspur Chhattisgarh.

---- Respondents

For petitioners	:	Mr. K.A. Ansari, Sr. Adv. With Ms. Meera Ansari and Mr. Aman Ansari, Advocate.
For respondents	:	Mr. D.P. Singh, Dy. Adv. General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

05/02/2021

1. This petition has been brought being aggrieved by the orders dated 3.11.2020, 2.12.2020, 4.12.2020 & 17.12.2020 passed by the Court of learned 5th Additional District Judge, Bilaspur, Chhattisgarh on the caveat filed by the respondent Nos.1 to 4.
2. It is submitted by learned counsel for the petitioners, that on 16.10.2020 respondents No.1 to 4 filed a caveat application under Section 148A of CPC praying that in case of filing of any appeal against the order dated 31.8.2020 passed in Execution Case No.52-A/1994, no order be passed without hearing them. The petitioners had already filed an appeal against that order passed on 1.10.2020. The learned District Judge initiated separate proceedings on the caveat application and ordered for issuance of notice by orders on 3.11.2020, 18.11.2020, 2.12.2020 & 4.12.2020. The appeal filed by the petitioners

is still unregistered, in which, similar orders have been passed by the appellate Court directing issuance of notice to the caveators, because of which the proceedings before the appellate Court is held up, hence, it is prayed that appropriate order be passed.

3. I have heard the party and perused the documents on record.
4. Considered on the submissions. The provision to lodge caveat is provided under Section 148A of CPC, which is as follows:-

“(1)Where an application is expected to be made, or has been made, in a suit or proceeding 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).

(3) 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.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveators 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.

(5) 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.] ”

Sub-section (1) of Section 148A CPC provides that 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 this case, the appeal has already been preferred by the petitioners. There is requirement of issuance of notice under sub-section (2) of Section 148A of CPC on the person by whom the application etc., is expected to be filed. The learned Court

below has not passed any order under sub-section (2), however, it has been observed in the order dated 20.10.2020, in which date has been erroneously mentioned as '23.3.2020', that the appeal is fixed for hearing on 27.10.2020, therefore, the caveat matter be listed on the same date i.e. 27.10.2020. On 27.10.2020, the Presiding Officer was on leave.

5. There is a separate proceeding in the appeal filed by the private respondents which is still unregistered and orders have been passed for issuance of notice to the respondents wherein respondents No.2 to 5 are the caveators.
6. Sub-section (3) of Section 148A of CPC provides that after any application or other proceeding is initiated, the Court shall serve a notice of such application on the caveator. On perusal of the order-sheet of the appeal case, it is found that there is mentioned of filing of caveat by the respondents No.1 to 4 and order has already been passed for issuance of notice, but so far the service on respondents No.2 to 5 could not be effected according to the reports on the notices issued to the private respondents. Filing of caveat application under Section 148A of CPC gives entitlement to a caveator to be heard before any order is passed on any application. Although sub-section (2) provides for issuance of notice, but in case of non-issuance of notice at the behest of the caveator, the right of the caveator is not nullified. The learned Court has taken notice of the caveat filed by the private respondents and passed orders of issuance of notice in the appeal case which may be regarded as compliance of Section 148 A of CrPC. However, even after issuance of notice on more than one occasions the service could not be effected on the private respondents/caveators so far. The separate proceeding in the caveat application is also continuing in which the caveator are not putting in appearance and further there is no order for appearance of the petitioners, hence, the proceedings on the caveat application, which are being continued, appear to be unnecessary.
7. After considering on the submissions and considering on the documents filed along with the petition, I am of this view that there is no requirement for setting aside any orders passed, however, it is to be

noted that after filing of the appeal by the petitioners against the order impugned, which is also the order mentioned in the caveat application, there is requirement to comply with Section 148A(3) of CPC only for the present and after the appearance of the private respondents Nos. 2 to 5, the proceeding under Section 148A of CPC shall be automatically concluded. Hence, this petition is disposed of at motion stage with a direction to the learned Court to continue with the proceedings drawn in the appeal for making compliance under Section 148A(3) of CPC. However, separate proceeding on the caveat application need not be continued.

8. With the above observations, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge