

## **Quadrant II – Notes**

**Paper Code: CPL 0512**

**Module Name: Miscellaneous –Caveat and Inherent powers**

**Module No: 12**

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### **Introduction**

Section 148-A of the civil procedure code speak about Caveat. Caveat means Beware. It is a warning or caution given by a party to the court not to take any action or grant any relief to the applicant without notice being given to the party lodging the caveat. After lodging a caveat, it remains in force for 90 days. It shall not remain in force after the expiry of 90 days from the date on which it was lodged. Caveat is very common in testamentary proceedings

### **1) Meaning and Definition of Caveat**

The term "caveat" has not been defined in the Civil Procedure Code. It has been derived from Latin which means 'beware'. Dictionary meaning of Caveat is any entry made in the book of the offices of a registry or Court to prevent A certain step being taken without prior notice to the person entering the caveat.

### **2) Provisions of Caveat (Section 148-A)**

**Right to lodge a caveat** - Section 148A of the code of Civil Procedure.

(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 caveator's 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.

### **3) Who may File Caveat -**

A caveat may be filed by any person who is going to be affected by an interim order likely to be passed on an application which is expected to be made in a suit or proceeding instituted or about to be instituted in a Court.

According to Section 148A sub Section (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.

A person who is a stranger to the proceeding cannot lodge a caveat. Likewise, a person supporting the application for interim relief made by the applicant also cannot file a caveat.

### **4) Time Limit - What is time period for which caveat stays in force?**

Caveat duration - Caveat will remain in force for 90 days from the date of its

filing. After 90 days Fresh Caveat Petition can be filed.

### **5) What happens if the caveat is filed and the Court and the applicant don't give notice to the Caveator?**

It cannot be done, because the Court is bound by the Caveat. But if the Court or the Applicant ignored it then whatever decree or order is passed that becomes null and void.

### **Inherent Powers of the court**

The word “Inherent” is very wide in itself. It means existing and inseparable from something, a permanent attribute or quality, an essential element, something intrinsic, or essential, vested in or attached to a person or office as a right of privilege. Hence, inherent powers are such powers which are inalienable from Courts and may be exercised by a Court to do full and complete justice between the parties before it.

The Code of Civil Procedure, 1908, consolidated and amended the laws relating to the procedure of the Courts of Civil Judicature in India. The object of prescribing the procedure is to facilitate justice and further its ends. What we can conclude out of the above mentioned object is that no party should suffer from the vice of justice and absolute justice must be provided.

Disputes can be varied and it is not possible to make a proper and rigid law for the same. If words of the code are restricted then justice will suffer a setback. As such there is no hurdle faced in furtherance of justice but the situation which the Courts sometimes face is the absence of provision to meet with certain reliefs, it is with this object to grant bonafide reliefs or exercise of power to do justice i.e. which can be exercised *ex debito justitiae*, in the absence of express provisions in the code and in absentia of any procedure, inherent powers of Court and the scheme there under is engrafted under the Code of Civil Procedure. It is clear that Inherent Powers are complementary to those powers and the Court is free to exercise them for the ends of justice or to prevent the abuse of the process of the Court.

In the very recent verdict the Hon'ble Supreme Court upheld that Section 151 of the Code recognizes the discretionary power inherited by every Civil Court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong'.

Section 151 of CPC reads: "Nothing in the 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 abuse of the process of the Court.

Section 151 deals with saving of inherent powers of the Court and provides that nothing in Civil Procedure 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.

Section 151 delineates the inherent power of a Civil Court. It enables the Court to make orders necessary (i) for the ends of justice, or (ii) to prevent of abuse of process of the Court, and (iii) there is no limitation in such inherent power under the Code.

It is clearly specified that the Code has not created any new power but has preserved the power to act in the ends of justice and to prevent abuse of the processes of the Court, which existed in the Civil Courts per se, simply because it's a Court of Justice.

#### **i. Ends of justice**

In other words, 'ends of justice' can also be understood as objectives of justice. In the case of *Debendranath v. Satya Bala Dass*, the phrase "ends of justice" was explained and it was held that "ends of justice are solemn words and not mere polite expression in juristic methodology and justice is the pursuit and end of all law. But these words do not mean vague and indeterminate notions of justice according to statutes and laws of the land". In other words, it can be said that inherent powers of a Court can be invoked only for the attainment of the ends of substantial justice; Court may do what is fair and equitable.

## ii. **Abuse of the process of the Court**

The phrase is generally used in connection with action for using some process of Court maliciously to cause injury to the other person. Here, abuse of process means the frivolous and vexatious use of legal proceedings and abuse of the process of the Court also means the malicious and improper use of some regular legal proceedings to obtain an unfair advantage over an opponent.

The inherent powers exercised under S. 151, C.P.C. are **discretionary**. In considering the question of propriety in invoking the power, the Court should take into account several matters, some of which are the complexity of the question involved, availability of a more complete and efficacious remedy by means of a suit and the apparent justice of the claim. These are not exhaustive but merely illustrative. They would vary according to the facts and circumstances of each case. No hard and fast rule can be laid down.

## iii. **Limitations**

The power u/s 151 cannot be exercised if its exercise is inconsistent with or comes into conflict with any of the powers expressly or by necessary implication conferred by the other provisions of the code. It cannot be invoked as substitute for appeal, revision or review. In exercise of inherent powers, however, the Court cannot override general principles of law. It can only be for securing ends of justice and to prevent abuse of process of Court. Also it cannot be invoked to grant a relief beyond the scope of law.