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**ABUSE OF PROCESS AND INTRICACIES IN LINE WITH THE
CODE OF CIVIL PROCEDURE, 1908**- Samiksha Gupta¹**INTRODUCTION**

Very often we have heard that the Indian Judiciary is deliberated as an overburdened institution in lieu of the rising no. of pending cases before the courts. It has been observed that the abuse of the process of law has also been a significant contributing factor to the pendency of cases in the Indian courts. The courts are also observing the fact that how parties resort to tactics such as filing frivolous and vexatious suits and engage in dilatory tactics to prolong the litigation process.

The kind of procedure that has been ensured to serve justice is being continuously misused when the parties exacerbate the backlog of cases and hinder the efficient administration of justice. Such misuse not only clogs the court with non-meritorious matters but also undermines the integrity of the legal system.

Further this broader term would be discussed in line with the code of civil procedure, 1908.

CODE OF CIVIL PROCEDURE IN LINE WITH ABUSE OF PROCESS

The code of civil procedure, 1908 (for gravity CPC) is a foundational legal framework that governs the process of civil lawsuits in a jurisdiction. While on the other hand it, having the procedural aspects it outlines the steps to be followed in the civil cases. It also involves substantive legal principles. Due to its substantive and procedural nature it is almost impossible to define everything and it has also been greatly evolved through the landmark judgements.

But one vexed question that is to be highlighted here due to its nature is the misuse of legal process in civil litigation by the parties.

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The delays are generally caused as the cpc works in line with the principle of “*Actus curiae neminem gravabit*” which means that the act of court shall prejudice no one and justice should be prevailed. But it has often been observed that parties sometimes misuse the system through procedural delays. Sometimes parties may also misuse the judgements. Additionally parties may also misuse the discovery procedures to overwhelm the opposite party with burdensome discovery requests, a party can create delays, increase costs, and may potentially uncover information that could be used strategically in the case.

INHERENT POWERS OF THE COURT

Based on the maxim “*Franc et jus nunquam cohabitant*” which means that fraud and justice never dwell together, the remedy lies in section 151 of code of civil procedure, 1908. Section 151, cpc talks about the court's inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. There have been various instances when the court's inherent powers have been used. However, there are several limitations to section 151.

In “*Ramji Gupta v Gopi Krishan, 2013 SCC 296*”, it has been observed by the apex court that the inherent powers can't be used to open settled matters nor it could be exercised in contravention of, or in conflict with or by ignoring any express and specific provision of law.

Use of inherent powers in exceptional circumstances

The mere existence of power doesn't justify absolute power, all powers must be exercised in the purview of securing ends of justice. But it is to be noted here that the code of civil procedure does not specifically lay down any procedure, therefore provisions of section 151 can be restored in the interest of justice.

The authority wielded under section 151 of the code is “*ex debito justitiae*” which means from or as a debt of justice. A pleading invoking the inherent authority of the court under this section is not one that a party is obliged to make under any provision of the code to set the legal process in motion. Inherent powers cannot be wielded to render provisions of the code ineffective. When the code explicitly addresses a specific issue the provision should generally be considered exhaustive¹

In scenarios not covered by the explicit provisions, the court retains its inherent powers to issue orders necessary for the administration of justice. This section upholds these inherent

powers and it cannot be contended that the court lacks the authority to do what is right or rectify a wrong simply because there is no specific provision addressing the issue.

PREVENTION OF ABUSE OF PROCESS OF LAW

- *State of Kerala v Tharassia, AIR1994 SC*

The case dealt with the scenario where a landlady sought eviction for reconstruction purposes but didn't follow through, the Court permitted the tenant to proceed with the reconstruction. However, the Municipality and State hindered the reconstruction efforts influenced by the landlady's son, a municipal councillor. Upon the State filing a special leave petition, the Supreme Court mandated the payment of Rs. 10,000 as exemplary costs, to be recovered from the officers accountable for the decision to file the petition.

- *Mayar ltd. V owners and parties, vessel MV fortune express, AIR2006,SC*

In a contract involving the transportation of logs from a foreign port to Calcutta, some logs were not properly unloaded upon arrival. A lawsuit was initiated to recover the value of the missing logs and associated expenses. The essential facts supporting the claim for a decree were outlined in the complaint. Notably, the clauses in the Bill of Lading conferring jurisdiction to a foreign court for dispute resolution and resolving the previous ship from liability were not initially disclosed. Consequently, the plaintiff was not concealing vital information, and there was no misuse of the legal process. Therefore, the suspension of legal proceedings based on the mentioned grounds was revoked.

PRIME PURPOSE OF INHERENT POWERS OF THE COURT

- To curb the multiplicity of proceedings

In the legal realm, avoiding the duplication of proceedings is vital for the smooth functioning of the justice system. The inherent power granted under Section 151 of the code plays a pivotal role in this context. This authority empowers the court to take necessary measures to prevent the misuse of legal procedures and ensure the efficient delivery of justice. By invoking its inherent power, the court can consolidate cases, eliminate redundant proceedings, and uphold the integrity of the legal framework. This ability is instrumental in optimising legal processes and averting unnecessary complications for the parties involved in legal disputes.

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- To ensure complete justice to the parties

The inherent powers granted under Section 151 of the Civil Procedure Code (CPC) play a crucial role in ensuring the delivery of complete justice within the legal system. These inherent powers empower the court to take necessary actions not explicitly provided for in the CPC to prevent abuse of process, fill in procedural gaps, and address unforeseen circumstances that may arise during legal proceedings. By utilising these inherent powers, the court can tailor its actions to the specific needs of a case, thereby facilitating the administration of complete justice and maintaining the integrity of the legal process.

MISUSE OF CIVIL JUDGEMENT: *SHEODAN SINGH V DARYAO KUNWAR 1996* **SC**

The legal scenario presented in the case of “*sheodansingh v daryaokunwar*” holds great significance in the annals of Indian legal history, particularly within the realm of property law and succession. It sheds light on the principles governing the validity of wills, property distribution rules, and the repercussions of prior court decrees. Multiple lawsuits were initiated, subsequently consolidated, and followed by appeals for each suit. Despite two appeals being dismissed on procedural grounds, Sheodan Singh contended that they were not genuinely heard and conclusively decided.

The apex court, in its ruling on this case, established that the dismissal of these appeals would be deemed as having been duly heard and conclusively decided. Even if the dismissal was based on technicalities, it signifies the finality of the trial court's judgement. Given that the trial court's decision was based on substantive merits, it is considered as having been properly heard and conclusively decided. Essentially, the appellate court's dismissal equates to endorsing the trial court's judgement as if it were the appellate court's own decision.

Possible misuse of this judgement in other circumstantial matrix

Let us understand this through an illustration.

Lets say A filed a suit against B valued 5 lakhs for “x” cause of action. Then A again bought a suit valued 5 lakhs for “y” cause of action against B. Both these suits were consolidated and 4 lakhs were awarded to A in each suit. Now both A and B became the aggrieved parties since A didn't get enough relief he initially asked for and B because the suit was decreed against him. A and B both filed appeals in the appellate court but A's appeal was barred by limitation. Now as per the factual matrix of Sheodan Singh's judgement , bar on B's appeal

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would apply as A deliberately gets the appeal dismissed on the technical grounds and according to the case it would be considered as former suit and would operate as res judicata on the appeal filed by B.

In this scenario, it was established how A slyly allowed their appeal to be dismissed on technical grounds, it would be seen as a strategic move to revive the initial case. This calculated action would trigger the doctrine of res judicata, indicating that the matter has already been conclusively settled in the original case. Consequently, this manoeuvre would act as a barrier to B's appeal being heard in court, as the legal doctrine of res judicata would come into play based on Sheodan Singh's judgement.

Solution for anticipated misuse

A judgement of a court of law can't be allowed to be misused. A judgement based on equity can't be allowed to do inequity with the other party. In such cases the court would use Inherent powers under section 151 of cpc and even special powers under article 142 of constitution can be exercised by the apex court. The facts of example being different from that of sheodansingh's case, the judgement would not apply as the procedure is the handmaiden of justice and not its jealous mistress.²

²*Bajranglalshivchandrari Ruia v Shashikant N. Ruia And Ors. 2004 SC*