

It in the court itself
and have not



**ASSIGN
BUSTER**

It is to serve this necessity that provision has been made in Section 151 of the Code of Civil Procedure, which reads thus: “ Nothing in this 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.” It is a saving clause and only gives legislative recognition of an age-old and well-established principle that every court has inherent power to do that real and substantial justice between the parties for the administration of which alone it exists. The inherent powers are inherent in the Court itself and have not been conferred by the Code; these powers are independent of and in addition to any other powers that the Court may exercise under the Code. [Sm. Bhagwant v.

Kedarnath Kapur, [1974 77 P. L. R. (d) 5]. The court has an inherent power under S.

151, C. P. C.: (a) To consolidate suits and appeals, including appeals to the Supreme Court; (b) To postpone the hearing of suits pending the decision of a selected action. [Vetha v.

Narayan, (1868) 5 Bom. 30)]. (c) To stay cross-suits on grounds of convenience. [Hukam Chand v. Kamalchand, (1906) 36 Cal. 927].

(d) To allow a defence in forma pauperis. [Durga Sharon v. Nitto Kally, (1880) 4 Cal. 819)]; (e) To grant restitution apart from the provisions of Section 144, C.

P. C.; (f) To add a party or to transpose parties, or where the appeal is filed against dead persons to allow the appellant to add legal representatives of

the deceased as parties in proper case. [Alabhai v. Bhura Bhaya, (1936) Bom. 602], (g) To entertain the application of a third person to be made a party; (h) To punish summarily by imprisonment contempt of court committed by the publications of a libel out of court. [Surendra nath Banerji].

The Chief Justice and Judges of the High Court of Bengal, (1884) 10 Cal. 109];

(i) To stay the drawing up of the court's own orders or to suspend their operation, if the necessities of justice so require. [Luchmi Narain, in the good of (1901) 5 C. W. N. 21]; (k) To restrain by injunction a person from proceeding with a suit in another court: (l) To vacate an order obtained by fraud; (m) To remand a suit in a case to which neither O.

41, R. 23, nor O. 41.

R. 25 applies. [Beni Ram Butt v.

Ram Lai. (1886) 135 Cal. 1890]; (n) To interfere where its decree is being executed in a manner manifestly at variance with the purposes and intent of the decree; (o) To stay a suit even when it does not come within Section 10, C. P.

C.; (p) To apply to principles of res judicata to cases not falling within Section 11 of the Code; (q) To recall and cancel the court's invalid orders. [Champa Devi v. Asha Devi, (1938) All. 71], etc. The Code of Civil Procedure is not exhaustive and Section 151 does not confer any power but only indicates that there is power to make such orders as may be necessary for the ends of justice or to prevent an abuse of the process of the court. It is in the ends of justice to avoid needless expense and inconvenience to parties. So that

Court will not refuse relief merely because an application therefore is made under a wrong section or because there is some technical defect.

The abuse of the process of the court may be the result of an act of the court itself (default of its officers) or may be done by the party (misrepresentation). In all such cases, the court is empowered to remedy the wrong. The exercise of such inherent power can only be invoked where the court is satisfied that the provisions of the Code are not sufficient to meet the exigencies of the case—Justice Asutosh Mookerjee in the case of *Ghuznavi v. Allahabad Bank Ltd.*, (1917) I. L. R. 44 Cal.

929 F. B. Justice Woodroff in *Hukum Chand v. Kcunalanand Singh*, (33 Cal. 929), observed thus with reference to the applicability of Section 151 of the Code; “ I am not aware of any authority which has laid down that the Code of Civil Procedure is exhaustive. The essence of a Code no doubt is to be exhaustive on the matters in respect of which it declares the law on any point specifically dealt with by it. In respect of such matters the court cannot disregard or go outside the letter of the enactment according to its true construction. The Code does not affect the powers and duty of a court where no specific rule exists to act according to justice, equity and good conscience, though in exercise of such power it must be careful to see that its decision is based on sound general principles and is not in conflict with them or the intentions of the Legislature.” “ The court has therefore, in many cases where the circumstances require it acted on the assumption of the possession of an inherent power to act *ex debito justitiae* (to act as justice demands) and to do that real and substantial justice for the administration of

which alone it exists. It has, therefore, to be noted that the Code is not exhaustive and in matters with which it does not deal, the court will exercise an inherent jurisdiction to do justice between the parties as is warranted under the circumstances and which the necessities of the case require. The limitations of the inherent power may also be noted.

In the first place, the court has no inherent power to do what is prohibited by the Code. Section 151, C. P. C.

, does not invest the Court with jurisdiction over matters which are excluded from its cognizance. Thus, no appeal can be allowed from a non-appealable order. Similarly, when once a judgment is signed it cannot be altered or added save as provided by Section 152 or on review.

In the same way an ex parte decree cannot be set aside when no case has been made out within the meaning of O. 9, R. 13, of the Code. In the second place, the inherent power is not to be exercised where the applicant has his remedy provided elsewhere in the Code but has neglected to avail himself of it.

In the third place, the inherent power must not be exercised so as to come in conflict with the general principles of law. The court cannot entertain a suit arising in a place where it has no jurisdiction, nor can it, acting under Section 151, recall its own previous order or hear appeal from its own judgment except as provided by the Code. Lastly, the inherent power vested in Court is discretionary. The mere fact that there is remedy will not attract the provisions of Section 151, C. P.

C., unless it is necessary for the ends of justice or to prevent abuse of the process of the court.