

State of Karnataka and Another

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Court : Karnataka

Decided On : Feb-01-1999

Reported in : 1999(5)KarLJ637

Judge : P. Vishwanatha Shetty, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 148-A(2)

Appeal No. : Caveat Petition No. 583 of 1999

Appellant : State of Karnataka and Another

Advocate for Pet/Ap. : Sri R.I. D'Sa, Government Adv.

Judgement :

ORDER

1. This petition is posted before me on the objections raised by the office that the caveat filed by the State Government cannot be registered as the name of the respondent has not been shown and also the requirements of sub-section (2) of Section 148-A of the Code of Civil Procedure (hereinafter referred to as 'the Code') has not been complied.

2. Sri D'Sa, learned Government Advocate submitted that the requirement of sub-section (2) of Section 148-A of the Code is to be complied with, wherever it is possible to identify the person, who is likely to institute a proceedings against a person; and who is likely to make an application in such proceedings; and whenever it is not possible to identify such a person, the requirement of sub-section (2) of Section 148-A of the Code can be dispensed with as it is impossible of compliance. He pointed out that the object of Section 148-A of the Code is to give any person who claims right to appear before the Court in respect of the proceedings instituted against him and contest the claim of the opposite party and that being the object, if the requirement of sub-section (2) of Section 148-A of the Code, which provides for service of caveat petition on the person who is likely to institute proceedings, is read as mandatory and the compliance of the said provision is held compulsory, it would result in serious injustice to the parties and it would also take away the right given to a person under sub-section (1) of Section 148-A of the Code to lodge a caveat. He further pointed out that in large number of proceedings instituted against the State, especially when the proceedings are instituted as public interest litigations, or where the statutory provisions of an enactment are challenged, it is not possible to find out with certainty which member of the public is likely to institute proceedings before the Court and in that situation, if compliance of sub-section (2) of Section 148-A of the Code is held to be mandatory, it would defeat the very object and purpose of providing a right to lodge a caveat. It is his further submission that in the caveat petition filed by the State, a prayer was made to dispense with the requirement of subsection (2) of Section 148-A of the Code which provides for service of notice as provided under the said sub-section. He further submitted that what is the substance of the matter is that the caveator should specify the subject-matter of dispute; and with reference to what subject-matter, the relief is sought to be claimed against the caveator; and if that is done, there should not be any difficulty for the office of the Court to

register the caveat petition even if the requirement of sub-section (2) of Section 148-A of the Code is not complied with.

3. Since the matter is of some importance, I have heard the other members of the Bar, who are present in the Court, Sri V.S. Sadashivan and Sri Ashok Haranahalli, learned Advocates, made their submissions and supported the submission of Sri D'Sa.

4. However, Sri S.B. Hebbali submitted that the provisions contained in sub-section (2) of Section 148-A of the Code is mandatory. According to him, a party gets a right to file caveat under Section 148-A of the Code and therefore sub-section (2) of Section 148-A of the Code, which provides for procedures to be followed, is required to be followed and it cannot be dispensed with.

5. In the light of the submissions made by the learned Counsel, as stated above, the only question that would arise for my consideration is that in the absence of naming the person/party who is likely to institute a proceedings in the caveat petition and serving a notice of the caveat petition on such a person/party as required under sub-section (2) of Section 148-A of the Code, whether the caveat petition lodged is required to be registered by the office of the Court or not? The answer to this question depends upon the construction to be placed on sub-sections (1) and (2) of Section 148-A of the Act.

6. The object of introduction of the provision for lodging a caveat is to protect the interest of a person against an order that may be passed on an application filed or expected to be filed by a party in a suit or a proceeding instituted or about to be instituted against him. The object of lodging the caveat is to notify the Court not to grant any interim order or pass any order adverse to the interest of the person who has lodged caveat, without hearing him on an application filed for grant of interim order. Sub-section (1) of Section 148-A of the Code gives a right to a person claiming a right to appear before the Court in an application expected to be made, or has been made, in a suit or a proceedings instituted, or about to be instituted to lodge caveat. Sub-section (2) of Section 148-A requires that where a caveat has been lodged under subsection (1), the caveator shall serve a notice of the caveat by registered post acknowledgement due on the person by whom the application has been made or is expected to be made under sub-section (1). The provisions contained in sub-section (1) of Section 148-A of the Code prima facie indicates that the caveat can be lodged when an application is expected to be made or has been made, in a suit or a proceedings instituted, or about to be instituted in a Court, by a person who claims a right to appear before the Court in such proceedings. In other words, it indicates that the caveator could file a caveat if he is able to identify the person who is likely to institute the proceedings. In that event, sub-section (2) requires a notice of the caveat petition to be issued to the person who has already instituted the proceedings or who is likely to make an application in a proceedings already instituted. But, as rightly pointed out by Sri D'Sa, there may be a situation or case where the caveator is not able to identify which member of the public is likely to institute a suit and make an application for interim order in such a suit or a proceedings. In that situation, can it be held as contended by Sri Hebbali that the provisions of Section 148-A of the Code cannot be resorted to and a caveat cannot be lodged and registered? In my view, if such a construction is placed, it would defeat, to a large extent, the very purpose or the object behind Section 148-A of the Code. Section 148-A of the Code has to be understood as a right given to a person to lodge a caveat where an application is expected to be made or has been made in a suit or a proceedings instituted or about to be instituted in a suit. Therefore, in cases where it is not possible, with reasonable certainty, to identify the person or persons who are likely to institute a suit or a proceedings and make an application in such a proceedings, in my view, still a caveat petition can be lodged and if such caveat petition is lodged, such a petition is required to be registered by the Court. Merely because subsection (2) of Section 148-A provides for service of notice of such a caveat petition on a person, who is expected to institute a suit or a proceedings and the requirement of the said sub-section cannot be complied with, cannot be a ground to refuse to reject the caveat petition. Sub-section (2) of Section 148-A of the Code is required to be complied with when it is capable of being complied with. In cases where the person who is likely to institute a suit or proceedings cannot be ascertained with certainty, the question of complying with the requirement of sub-section (2) of Section 148-A does not arise. In my considered view, the substantive right

provided to lodge the caveat cannot be taken away on the ground that the provisions of sub-section (2) of Section 148-A cannot be complied with. The provisions of sub-section (2) of Section 148, in my view, must be understood as directory in nature. Wherever the requirement of the said provision is incapable of compliance, it will be within the discretion of the Court if valid grounds are made out for non-compliance of the said provision, to dispense with the compliance of sub-section (2) of Section 148-A of the Code and direct the office to register the caveat. However, it is necessary to point out that when a caveat petition is lodged, the caveator should specify with certainty the subject-matter of the dispute in a suit or proceedings likely to be instituted. If that is specified, as observed by me earlier, it is open to the Court before which the caveat is lodged in its discretion, to dispense with the requirement of sub-section (2) of Section 148-A of the Code, if an application under Section 151 of the Code is filed seeking dispensation of such requirement. In the instant case, there is no application filed under Section 151 of the Code for dispensing with the requirement of sub-section (2) of Section 148-A of the Code. Under these circumstances, the office was, in my view, justified in raising an objection with regard to the maintainability of the caveat petition.

7. However, at this stage, Sri D'Sa, learned Government Advocate, prays for a week's time to make necessary application seeking dispensation of the requirement of sub-section (2) of Section 148-A of the Code.

8. Time sought for by Sri D'Sa to make necessary application is granted.

9. In terms stated above, the office objection raised is disposed of.

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