

Harikishnan Vs. Jacob

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Court : Kerala

Decided On : Mar-15-2005

Reported in : AIR2005Ker220; 2005(2)KLT488

Judge : K.M. Joseph, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 141 and 148A; High Court Rules - Rules 148A and 150; ;[Constitution of India](#) - Articles 226 and 227

Appeal No. : Unnumbered Caveat O.P. of 2004

Appellant : Harikishnan

Respondent : Jacob

Advocate for Pet/Ap. : Party in person

Disposition : Petition dismissed

Judgement :
ORDER

K.M. Joseph, J.

1. Does a Caveat Petition lie in regard to a petition under Article 226 of the [Constitution of India](#). This is the question to be answered in this petition. The petitioner has filed this Caveat O.P. under Section 148A of the Code of Civil

Procedure. The contents of the petition would show that the caveator claims notice of any appeal or other proceedings filed against the order of the State Consumer Disputes Redressal Commission or against the order in E.P. No. 121/04 of the District Consumer Disputes Redressal Forum, Ernakulam. The High Court Registry has noted a defect, namely that the order of the State

Unnumbered Caveat O.P. of 2004. Decided on 15th March, 2005.

Consumer Disputes Redressal Forum is not appealable before the High Court. It is further stated that a Caveat O.P. is not maintainable against the proceedings under Article 226 of the [Constitution of India](#). On this objection, the matter was brought before this Court. The petitioner who argued in person would contend that he has filed the petition in conformity with the requirements of Section 148A of the Code of Civil Procedure, and that a Caveat Petition is maintainable. He would submit that unless it is found that a Caveat is maintainable, it will cause grave injury as otherwise, there would be no means for the petitioner to object to the passing of any order, even if the said order is to be passed in proceedings under Article 226. It is to be noted that Explanation to Section 141 C.P.C. declares that the C.P.C. would not apply to a proceedings under Article 226. Explanation to Section 141 C.P.C. reads as follows:

'In this Section, the expression 'Proceedings' includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.'

2. Rule 148A of the High Court Rules provides as follows:

'148A Service of notice in cases where Central Government/State Government is a party. An application under Articles 226 or 227 of the Constitution, in which the Central Government or the State Government is a party, shall not be moved, unless the Court otherwise directs, without serving a prior notice with a copy of the application on the previous day before 4.00 p.m. and in case where motion is made on the same day, before 12.00 noon on that day, on the Central Government Standing Counsel or the Advocate General.'

Explanatory Note to the same Rule reads as follows:

'The High Court has decided that the Rules of the High Court of Kerala, 1971 be amended so as to incorporate therein provisions enabling service of prior notice on the Central Government Standing Counsel and the Advocate General in cases where the Central Government and State Government are parties.

Section 148A of the Code of Civil Procedure, 1908 provides for lodging of caveats in the Subordinate Civil Courts in the State. But, no rules have so far been framed by the High Court regulating the lodging of Caveats.

The High Court felt it essential that rules are to be framed to regulate the lodging of Caveats in the Subordinate Civil Courts in the State. But, no rules have so far been framed by the High Court regulating the lodging of Caveats.

The amendment is intended to achieve the above objects.'

This was incorporated by an amendment on 23.8.2000. But, however, this only provides for service of notice on the Central Government Standing Counsel and the Advocate General in cases where the Central Government and State Government are parties. Rule 150 reads as follows:

'150. Interim Orders-

In admitting the application it shall be competent for the court to pass interim order on motion made for the same as to meet the ends of justice.'

3. It is clear that no Caveat Petition is maintainable in proceedings under Article 226 of the [Constitution of India](#). It may be true that the principles in the Code of Civil Procedure may apply. It is clear, therefore; that a Caveat Petition under Section 148A is not maintainable in proceedings instituted under Article 226. I uphold the objection of the Registry and find that the petition filed by the petitioner under Section 148A C.P.C. will not lie in regard to a petition under Article 226 of the [Constitution of India](#).