

A Comparative Study between Original Petition, Interlocutory Application and Other Petitions - A Critical Analysis

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ABSTRACT

Original petition typically refers to any petition or any application in court that states the origination of disputes and seeks specific reliefs. Rule 3(9) of the Code of Civil Procedure defines Original Petition as: 'Original petition means that a petition whereby any continuing apart from a suit or attractiveness or a proceedings in execution of a decree or order, is instituted in an exceedingly court.' the initial Petition refers to the purpose of origination of the dispute.

INTRODUCTION

On the opposite hand talking Petition is outlined beneath the Civil Rules of apply, Rule two (j) to mean "an application to the court in any suit, attractiveness or proceedings already instituted in such court, apart from a continuing for execution of a decree or order". It's fascinating to notice that the word "application" is outlined in Rule two (c) that has execution application, execution petition and talking application, each written and oral. Interlocutory Petitions area unit a type of incidental proceedings and that they area unit in aid to the ultimate proceedings. Associate talking Petition is initiated with a read to stop the ends of justice from being defeated once the initial Petition is unable to deal with the immediate circumstances talking Applications or talking Petitions area unit filed to support the most petition for associate talking relief through out pendency of the most Petition.

However, talking orders passed within the incidental continuing have an instantaneous relating the results of the initial petition and such orders is also issued in an exceedingly divorce proceeding wherever the talking application is for maintenance unfinished a choice on maintenance and support payment. Further, courts may additionally issue talking orders wherever property is on the point of be oversubscribed or lost and grant injunction, preventing the transfer of roperty till it's created a judgment. If we glance at the definition of Petition: Petition: A written address, embodying associate application or prayer from the person or persons preferring it, to the facility, body or person to whom it's bestowed, for the exercise of his or their authority within the redress of some wrong, or the grant of some favour, privilege, or license.

ORIGINAL PETITION AND INTERLOCUTARY APPLICATION UNDER THE CIVIL PROCEDURE CODE

Petition: A written address, embodying AN application or prayer from the person or persons preferring it, to the ability, body or person to whom it's given, for the exercise of his or their authority within the redress of some wrong, or the grant of some favour, privilege, or licens e. A proper written request self-addressed to some Governmental authority the correct of the folks to petition for redress of grievances is secured by the primary change U.S. Constitution.

Caselaws relating to the meaning of Petition

In general—A "petition" is a formal written request, made to some official or body having authority to grant it. **State exc rel. Jackson v. School Dist. No. 2, 34P 2d 102, 104, 140 Kan 171.** A "petition" is a formal written request or prayer for a certain thing to be done, the signers of which attach their signatures voluntarily **Davis v. Henderson 104 SW 1009, 127 Ky 13.** "Petition" meant an "appeal", a "prayer" or a "request" to act, and did not mean a particular form diagram or definition. **Tex O-Kan Flour Mills v. U.S. D.C. Tex., 49 F Supp 516, 520.**

In **Sm. Shyamali Sarkar vs Ashim Kumar Sarkar AIR 1988 Cal 124, 92 CWN 659** it was held that: "the word petition, when used in juxtaposition to the word application, would mean petitions of original nature, that is petitions which would initiate and found proceedings of original nature which are independent of and not consequential to any other proceedings."

However, the world application is synonymous with the term petition which means a written statement of material facts requesting the Court to grant the relief or remedy based on those facts as held in **Philip v. Director of Enforcement AIR 1976 SC 1185, 1187/Criminal Procedure Code (1974), Section 482(2)(a).**

In **A.R. Munuswamy Rajoo vs Hamsa Rani (1974) 2 MLJ 237** it was held that:

Under Section 26 to make orders and provisions with respect to the custody, maintenance and education of children. It is true that as per this Rule, proceedings under Section 26 of the Act are to be initiated by means of an Original Petition. But then Rule 2 of the same Rules says that "every other proceeding subsequent to the petition shall be by an interlocutory application.

The that means of 'Interlocutory application' is given within the Rule a pair of (j) of A.P. Civil Rules of apply and Circular Orders,1980. It reads: 'Interlocutory application' suggests that associate degree application to the court in any suit, charm or continuing already instituted in such court, other than a continuing for execution of a decree or order. there's no specific definition in Civil Procedure Code,1908 to the present phrase 'talk application'. Rules fifty three to sixty influence talk Proceedings. Further, the word "application" is outlined in Rule a pair of (c) that has execution application, execution petition and talk application, each written and oral. A comprehensive reading of the definition as higher than would unveil that talk application is one species of a broader term of 'application', however the execution application isn't associate degree talk application. For the aim of applications within the execution, the definitions are given within the Civil Rules of apply. They read:

Rule 2(e) "Execution Petition" suggests that a petition to the court for the execution of any decree or order;

Rule 2(f) "Execution Application" suggests that associate degree application to the court created during an unfinished execution petition, associate decreed includes an application of transfer, of a decree.

These definitions would denote that the term "interlocutory application" are going to be usually employed in Suits and proceedings just like suits. the opposite relevant provision within the Civil Procedure Code about the talk applications is Section 141 CPC. Further,

Sec. 141 is additionally relevant during this contenxt. - It says abouts 'Miscellaneous proceedings' : The procedure provided during this Code in reference to suit shall be followed, as way because it may be created applicable, altogether proceedings in any Court of civil jurisdiction.

Explanation: during this section, the expression "proceedings" includes proceedings underneath Or IX, however doesn't embrace any continuing underneath Art.226 of the Constitution

a) sort of talk Application as in kind No.13:- If we tend to bear Rule fifty three of the Civil Rules of apply, it's well-known that talk applications shall be created as in kind No.13. This rule reads as infra:

53. (29) sort of talk Application:- talk applications shall be headed with the cause title of the plaint, original petition, or appeal, as in kind No. 13.

b) What associate degree talk Application shall state :- If we tend to bear Rule fifty four of the Civil Rules of apply, what associate degree talk application shall state is understood to America. This rule reads as infra:

54. (30) Contents of :- Except wherever otherwise provided by these rules or by any law for the nowadays good, associate degree talk Application shall state the supply of law underneath that it's created and also the order prayed for or relief wanted in clear and precise terms. the applying shall be signed by the mortal or his Advocate, United Nations agency shall enter the date on that such signature is created each application in dispute of this rule, shall be came back for modification or rejected.

c) There shall be separate application in respect of every distinct relief:-

As seen from Rule fifty five, there shall be separate application in respect of every distinct relief prayed for. Further, once one talk application is filed combining many releifs, the court could direct the mortal to confine the applying solely to at least one of such relief's unless the relief's ar eventful and to file a separate application in respect of every of the others. This rule reads as follows:-

55. (30) Contents of :- There shall be separate application in respect of every distinct relief prayed for. once many relief's ar combined in one application, the court could direct the mortal to confine the applying solely to at least one of such relief's unless the relief's ar eventful and to file a separate application in respect of every of the others.

d) Court has power to reject or dismiss associate degree application underneath rule 56:-

Court could reject talk application if substantive order isn't asked for. Rule fifty six reads as follows:-

56. (31) could rejected if substantive order isn't asked for:- each application that doesn't pray for a

substantive order however prays simply, that the other application could also be pink-slipped, and each application that prays for associate degree order that have to be compelled to be applied for on the day fastened for the hearing of any suit, charm or matter, could also be rejected with prices

e) Out of order petition :- If the mortal intends to maneuver associate degree imperative (out) of order application, copy of such application shall be served to the advocate or the party associate degreed it shall contain an imperative application on the day laid out in the endorsement.

CAVEAT PETITION UNDER THE CIVIL PROCEDURE CODE

A Caveat may be a Latin term which implies, 'let someone beware' originated within the middle sixteenth century. In law, it should be understood as a notice, particularly in probate, that sure actions might not be taken while not informing the one that gave the notice. It should merely be understood as a warning. Within the Civil Procedure Code of 1908 (hereinafter, the Code) it absolutely was inserted beneath section 148A by the recommendations of the Law Commission of India's 54th Report and was inserted by the CPC (Amendment) Act 104 of 1976.

The Section: The Section talks in short concerning the caveat petition. A caveat petition may be a precaution live that is undertaken by individuals sometimes after they square measure having a really robust apprehension that some case goes to be filed within the Court relating to their interest in any manner.

The word 'Caveat' isn't outlined within the Code. However, within the case of *Nirmal Chand v. Girindra Narayan*, the Court had outlined the word Caveat, wherein it aforementioned, A Caveat may be a caution or warning given by someone to the Court to not take any action or grant relief to the opposite facet while not giving notice to the caveator and while not affording opportunity of hearing him.

The Section 148A of the Code reads as beneath,

148A. Right to lodge a caveat.

- (1) wherever associate degree application is predicted to be created, or has been created, in a very suit or proceedings instituted, or getting ready to be instituted, in a Court, anyone claiming a right to seem before the Court on the hearing of such application might lodge a caveat in respect there from.
- (2) wherever a caveat has been lodged beneath sub-section (1), the person by whom the caveat has been lodged (hereinafter stated because the caveator) shall serve a notice of the caveat by registered mail, acknowledgement due, on the person by whom the appliance has been or is predicted to be, made, beneath sub-section (1).
- (3) Where, once a caveat has been lodged beneath sub-section (1), any application is filed in any suit or continuing, the Court, shall serve a notice of the appliance on the caveator.
- (4) Wherever a notice of any caveat has been served on the applier, he shall instantly furnish the caveator at the caveator's expense, with a duplicate of the appliance created by him and additionally with copies of any paper or document that has been, or may be, filed by him in support of the appliance.
- (5) Wherever a caveat has been lodged beneath sub-section (1), such caveat shall not stay in effect once the ending of ninety days from the date on that it absolutely was lodged unless the appliance stated in sub-section (1) has been created before the ending of the aforementioned amount.

There square measure 5 basic ingredients to the section, that square measure mentioned in short,

i. WHO might lodge a Caveat? (Clause 1)

Any person claiming a right to seem before the Court,

- Where associate degree application is predicted to be created
- Where associate degree application has already been created
- In a suit or continuing instituted
- In a suit or continuing that is getting ready to be instituted

May lodge a caveat there from it's substantive in a very nature.

ii. Duties of the Caveator (Clause 2)

This clause is directive in nature. The person by whom the Caveat has been lodged is termed a caveator. He shall,

- Serve a notice of the Caveat by registered mail, acknowledgement due
- On the person by whom the appliance has been created
- On the person by whom the appliance is predicted to be created

iii. Duty of the Court (Clause 3)

After a Caveat has been lodged beneath Clause one, if any application is filed in any suit or continuing, the Court shall serve a notice of the appliance on the Caveator. This clause is obligatory in nature.

iv. Duties of the applier (Clause 4)

It is directive in nature and says that, wherever a notice of any Caveat has been served on the applier, he shall furnish, at the expense of the Caveator,

- A copy of the appliance created by him.
- Copies of any paper or document that has been filed by him in support of his application.
- Copies of any paper or document which can be filed by him in support of his application.

v. Life of a Caveat Petition (Clause 5)

The lifetime of the petition is ninety days, from the date on that it absolutely was lodged. the sole exception is, if the appliance already exists, or has been created before the aforementioned amount, the clause ceases to exist. All the higher than 5 ingredients square measure very important to a Caveat petition all the higher than square measure to be followed austerely.

CONCLUSION

The Court has aforesaid that a continuing underneath article 226 of the Constitution of Asian country, doesn't entertain a Caveat petition. It additionally applies for execution proceedings and proceedings underneath the Criminal Procedure Code. There's little doubt that the aforesaid parameters is stretched by suggests that of an important method, however, the terribly necessity of the supply can't be placed on stake by the Court owing to the complications of the Court. The section ought to be followed religiously by the Courts. The that means of the word 'Interlocutory application' is understood that associate application to the court in any suit, charm or continuing already instituted in such court, other than a continuing for execution of a decree or order. Section 141 of CPC deals with miscellaneous proceedings. Each talk Application needn't be tried as a suit underneath the pretext of Sec. 141 CPC. Sec.94 CPC deals with Supplementary Proceedings. As has been mentioned higher than, Chapter-V, Rule sixty of the Civil Rules of follow makes it clear that the facts that are necessary for judgement of the talk applications are to be well-tried by affidavits. As will seen from dicta determined in S. Ravinder's case, counting on the circumstances of the case, the Court could record oral and documentary proof at that stage additionally. it's only if the Court decides to record oral proof rather than deciding the matter on affidavits, that the procedure for marking documents, as within the case of recording of the proof within the suit, has to be followed.

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