

ORDER BELOW EXH.118 IN RCS NO.1952/2013

(Vijay Raundal & Ors. vs. Gulab Dangat & Ors.)

CNR –MHPU02-005827-2013

1. The defendant No. 11 has filed the present application under Section 10 r/w. Section 151 of Code of Civil Procedure, 1908 for stay of suit.

2. In brief, the defendant No.11 submitted that the plaintiffs have instituted the present suit for declaration of their status as an agent and for permanent injunction. In Civil Application No. 988/2001 in Second Appeal No. 803/2001 by orders dated 20/12/2001 and 28/01/2002 the Hon'ble High Court passed injunction order restraining the creation of third party interest over the suit property. The plaintiffs had knowledge of the injunction order. In violation of injunction order, Development agreement and Power of attorney dated 18/08/2005 registered on 22/08/2005 as well as Development agreement and Power of attorney dated 29/10/2005 have been executed on the basis of which the present suit is based.

3. Further he submitted that as there was breach of injunction order, the present plaintiffs are impleaded in Contempt Petition No. 288/2008. By order dated 03/03/2015 in Contempt Petition, the plaintiffs are restrained from creating third party interest over the suit property. In the present suit, the plaintiffs have claimed the reliefs on the basis of Development agreements and Power of attorney. In Contempt Petition, the defendant No. 11 has asked for

cancellation of the documents which are executed in favour of the plaintiffs in violation of injunction order. The present suit is subsequent suit and issues involved in both proceedings are same. To avoid the conflicting orders and multiplicity of litigation, the present suit needs to be stayed. Thus, he prayed to stay the hearing and proceeding of the present suit till the disposal of Contempt Petition No. 288/2008.

4. The application is opposed by the plaintiffs by reply Exh. 121. They have submitted that the present suit is instituted on 19/10/2013. The relief with respect to Development agreement is sought in Contempt Petition by amending it which was allowed to be amended by order dated 06/01/2015. Therefore, the present suit is not subsequent suit. The prayers in both the proceedings are different. The Contempt Petition cannot be considered as suit. Therefore, they prayed for rejection of the application.

5. Heard the learned advocates appearing on behalf of both sides. Read application and reply. Perused the record and proceeding.

6. The defendants No. 10 to 13 had filed a Civil Suit against the remaining defendants for specific performance of an agreement, which was dismissed. The appeal arising from the said Judgment was also dismissed. Being dissatisfied with the dismissal of First Appeal, the defendant No. 10 to 13 preferred Second Appeal No. 803/2001 before the Hon'ble High Court Bombay. By orders dated 20/12/2001 and 28/01/2002 in Civil Application No. 988/2001 arising out of the

said appeal, the Hon'ble High Court granted interim injunction restraining the creation of third party interest over the suit property. As there was breach of the said order, the defendant No. 10 to 13 filed Contempt Petition No. 288/2008. It is contention of the defendants No. 10 to 13 that inspite of injunction order in Second Appeal, the Development agreement and Power of attorney dated 18/08/2005 as well as the Development agreement and Power of attorney dated 29/10/2005 have been executed in violation of the said order. For the said reason, the plaintiffs are impleaded in the Contempt Petition as respondents No. 9 and 10. In the Contempt Petition, there are prayers for directions to the contemnors to purge the contempt by canceling the agreement dated 18/08/2005, Development agreement dated 29/10/2005 and other documents including the other prayers.

7. The defendant No. 11 is asking for stay of the suit until the disposal of contempt petition. It is his contention that the relief asked in present suit as well as contempt petition is same. Therefore, the hearing of the suit needs to be stayed. The learned advocate appearing on behalf of defendant No. 11 tried to point out that the Development agreements and Power of attorney have been executed in violation of interim injunction granted by Hon'ble High Court Bombay. The learned advocate submitted that the plaintiffs were aware about the grant of interim injunction still they choose to enter into Development agreement with the original owners of the suit property. She has further submitted that by order dated 26/04/2013 passed in Contempt petition, the possession of original owners the

defendants No. 1 and 2 is confirmed. The learned advocate has taken me through the correspondence exchanged i.e. Notices dated 17/10/2013 and 15/10/2013 by which it was informed to plaintiffs that the Development agreements executed in their favour are executed in violation of injunction order.

8. The learned advocate has also pointed out correspondence dated 21/09/2013 and 27/09/2013 by which Power of attorney holder of defendants No. 1 and 2/Original owners of suit property informed the plaintiffs that it is necessary to cancel the Development agreement and Power of attorney. They were also informed about the filing of Contempt Petition as those documents were entered in breach of injunction order. There are undertakings filed by Power of attorney holder of defendants No. 1 and 2 Mr. Ramsingh Kohali Rajput as well as defendants No. 14 to 16 in connection with cancellation of the documents executed by themselves. She submitted that to avoid contradictory orders, the hearing of the suit needs to be stayed. Thus, the learned advocate prayed for stay of further hearing in the suit.

9. The learned advocate for defendant No. 11 has relied on the following authorities :-

- A) **Bansidhar Pradhan Vs. Kalinga Institute of Mining Engineering and Technology & Ors. AIR 2011 Ori 56** wherein the Hon'ble High Court held that when the trial Court finds that proceeding with any interim application would touch the merits of the suit, he should not proceed with the application in the suit which is stayed under Section 10 of CPC.

- B) **Shriram Narayan Dhond & Anr. Vs. Demu Surya Gaude 2008 (1) Goa L.R. 379** wherein our Hon'ble Parent High Court held that the principles enshrined in Section 10 and 11 of CPC although referring to suits are also applicable to interim applications on the strength of the principle of public policy and aiming curtailing or putting an end to unnecessary litigation which can be adjudicated in the earlier suit.

10. Per contra, the learned advocate for the plaintiffs submitted that the defendant No. 11 is asking for stay of suit as the Contempt Petition is pending. The Contempt Petition is not the former suit so as to stay the hearing of the suit. The plaintiffs are impleaded in the Contempt Petition after filing of the suit. Therefore, Contempt Petition is not former proceeding for them. So the present application is not maintainable. Thus, the learned advocate prayed for rejection of the application.

11. The learned advocate for plaintiffs has relied upon the following authorities :-

- A) **2022(2) Mh. L. J. 535 Dr. Bais Surgical & Medical Institute P. Ltd., Nagpur & Anr. vs. Dhanjay Digamber Pande** wherein our Hon'ble Parent High Court discussed the consideration for the applicability of Section 10 of CPC.
- B) **National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara (2005) 2 Supreme Court Cases 256** wherein Hon'ble Apex Court held that fundamental test for applicability of Section 10 is whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit.
- C) **Vishwambhar & Ors. vs. Laxminarayan (Dead) Through**

LRS. & Anr. (2001)6 Supreme Court Cases 163, wherein Hon'ble Apex Court held that amendment in pleadings cannot relate back to the date of filing of the suit and cure the defect of limitation.

12. Under Section 10 of CPC there is bar to proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between the parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed.

13. From reading the aforesaid provision, it is clear that for applicability of Section 10, there shall be same matter in issue in both the proceedings between the same parties. In the case in hand, the issue involved is same to the issue involved in Contempt petition. The parties to both the proceedings are almost similar. But for attracting the provisions of Section 10, the matter in issue involved in the suit must be directly and substantially in issue in a previously instituted suit. But in the present case, the previously instituted proceeding is Contempt Petition. It is not a suit.

14. The word 'suit' is not defined in the Code of Civil Procedure. But Section 26 of the said Code provides for institution of suits. Sub-Section 1 of the said provision provides that every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. The Contempt Petition is not the suit. The foremost requirement for applicability of Section 10 is pendency of

previous suit, which is missing here. Therefore, the provisions of Section 10 would not come in assistance to the defendants for asking stay of suit.

15. In case of **National Institute of Mental Health** cited supra in **Para No. 8** the Hon'ble Apex Court held that the language of Section 10 of CPC suggests that it is referable to a suit instituted in the Civil Court and it cannot apply to proceedings of other nature instituted under any other statute. As the previously instituted proceeding is not the suit, the provisions of Section 10 does not attract.

16. Formerly, application (Exh.88) was filed by the plaintiffs for stay of suit till final disposal of Second Appeal No. 803/2001 with Contempt Petition No. 288/2008. After filing of the application under Order, the plaintiffs have not pressed that application. The learned advocate appearing on behalf of defendant No. 11 submitted that already the application of such nature was moved by plaintiffs which is not pressed by them. Estoppel applies against them. On the contrary, the learned advocate for plaintiffs submitted that the principle of estoppel does not apply here as the Second Appeal is disposed of by filing consent terms and only Contempt petition is pending.

17. Having heard both sides, it is clear that the earlier application filed by the plaintiffs for stay of suit is not pressed by them. Even if it is not pressed, it does not confer rights with the

defendants to ask for stay of the suit though there is no previously instituted suit. As there is no previously instituted suit, the further proceeding of the suit need not to be stayed. The cited cases on behalf of defendant No. 11 relates to object of stay of suit and bar to proceed certain interim applications in case of stay of suit. Those authorities are not helpful to him. So there is no force in the application. The application is liable to be rejected. In result, I pass following order :-

ORDER

The application is rejected.

Pune
Date :- 27/01/2023

(K.M. Jaisingani)
10th Jt. Civil Judge Senior Division,
Pune.

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I affirm that the contents of this P.D.F file judgment/Order are same, word to word, as per the original judgment/Order.

Name of the Stenographer	Mrs. J.S. Tembre,
Name of the Court	Mr. K.M. Jaisingani, 10 th Jt. C.J.S.D., Pune.
Date of Judgment	27/01/2023
Judgment signed by the P.O on	01/02/2023
Judgment uploaded on	01/02/2023

