

C. S. No. 28/17

08.11.2017

Present: Counsel for plaintiff.

Proxy counsel for defendant.

Heard on the pending application under section 10 CPC.

It appears that there is no suit pending as on date except the present suit and therefore there is no question of stay of the proceedings of this suit under section 10 CPC.

Counsel for the plaintiff submits that this suit was filed after seeking permission to withdraw the earlier suit vide order dated 20.10.2016. It is further submitted that review petition was filed by the defendant against the said order which also stands dismissed vide order dated 18.08.2017.

Counsel appearing for the defendant submits that defendant has challenged the dismissal of review petition vide order dated 18.08.2017 before Hon'ble High Court.

Counsel for the plaintiff on enquiry, submits that even written statement has not been filed by the defendant in this case.

In view of the aforesaid facts and circumstances, there is no question of applicability of Section 10 CPC in this case. Passover is sought on behalf of the defendant as main counsel is on the way.

Put up at 2 p.m. as prayed.

(Vipin Kumar Rai)

Additional District Judge-03
East District, Karkardooma Courts
Delhi.
08.11.2017

At 2 p.m.)

Present: Counsel for plaintiff.

Counsel for defendant with defendant No. 2 and 3.

Heard and perused.

Counsel for the defendant submits that the suit which was earlier withdrawn on 20.10.2016, on behalf of three plaintiff only and it continued in respect of 4th plaintiff and was finally dismissed for non prosecution on 18.08.2017,

when review petition also filed by the defendant seeking review of the order dated 20.10.2016 was dismissed.

Keeping in view there being no pendency of the earlier suit, the application under section 10 CPC no longer survives notwithstanding with the contentions raised by counsel for the defendants that in view of defendants having challenged the order before Hon'ble High Court by Civil Misc (Main), same is to be treated as continuation of the earlier suit. In view of provision under section 10 CPC relating to the stay of the proceedings in the given case on account of pendency of the some earlier suit in respect of similar relief, and there being no pendency presently of the suit , I do not see any merit in the application under section 10 CPC and the same is dismissed accordingly.

Written statement is yet to be filed on behalf of defendant in this case.

There is an application filed on behalf of defendant seeking extention of time for filing of the written statement as referred in the order sheet dated 10.03.2017, already there has been almost 8 months since then, I deem it appropriate to direct the defendant to file written statement within four weeks positively with advance copy to the opposite counsel.

Put up on 06.01.2018.

(Vipin Kumar Rai)

Additional District Judge-03
East District, Karkardooma Courts
Delhi.

08.11.2017

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