

**IN THE COURT OF SH SHIV KUMAR
DISTRICT JUDGE-02 (WEST)
TIS HAZARI COURTS, DELHI**

**Civ DJ No. 686/2019
CNR No. DLWT01-007457-2019**

GAIL (INDIA) LTD.

Plaintiff

Vs.

ANJU

Defendant

**ORDER ON APPLICATION FILED UNDER SECTION 10
CPC READ WITH SECTION 151 CPC ON BEHALF OF
DEFENDANT FOR STAY OF THE SUIT FILED BY THE
PLAINTIFF.**

1. Vide this order, I shall decide the application filed under section 10 CPC read with section 151 CPC on behalf of defendant for stay of the suit filed by the plaintiff.

2. In a nutshell, it is stated in the application that the present suit is liable to be stayed as per the provision contemplated under Section 10 of CPC, 1908 as the subject matter of the present suit is pending before the Hon'ble High Court of Delhi in LPA No. 736/2019, filed on behalf of the plaintiff. It is further averred that the Hon'ble High Court of Delhi in WP(C) No. 13901/2018 titled as " Anju Bala Vs. GAIL (India) Ltd. & Ors. set aside the

illegal termination of the defendant and directed the plaintiff to reinstate the defendant in service with all consequential benefits with 50% back wages for the period she has not worked.

3. It is further averred that this Hon'ble Court lacks jurisdiction to adjudicate the claim of the plaintiff as root of all the disputes which have arisen for filing the present suit lies in the illegal termination of the defendant by the plaintiff. It is further averred that the plaintiff has suppressed true, relevant and correct facts of pendency of/reserving the order in WP (c) No. 13901/2018 titled as “ Anju Bala Versus GAIL (India)Ltd. & Ors”, of the Hon'ble High Court of Delhi, at the time of filing of the present suit. Therefore, the present suit filed by the plaintiff suffers from malice on the part of the officials of the plaintiff and as such the present suit warrants stay on this short ground alone.

4. It is further averred in the application that even when the present application does not fulfill all the ingredients of Section 10 of CPC, the court can put stay on the proceedings under the power given in Section 151 CPC. It is further averred that section 151 CPC gives inherent power to the court to make such order which is necessary for securing ends of justice and to prevent abuse of the process of the court.

5. It is further averred in the application that the cause of action for filing the present suit as well as WP© No. 13901/2018 titled as “ Anju Bala Vs. GAIL (India) Ltd. & Ors. before the

Hon'ble High Court of Delhi was only the illegal termination of the defendant. The section 10 of CPC bars the two parallel between the same parties on the same cause of action. It is therefore, prayed that this court may be pleased to stay the proceedings of the present suit with immediate effect and/or pass such order, which this court may deem fit.

6. Reply to the above application has not been filed on behalf of plaintiff and ld. counsel for the plaintiff has straightway argued on the above said application.

7. I have heard arguments from ld. counsels for both the parties and perused the record.

8. Ld. counsel for the defendant has argued that he had filed writ petition bearing no. WP (C) no. 13901/2018 tilted as "Anju Bala Vs Gail India Ltd & Ors in the Hon'ble High Court of Delhi before filing of the present suit by the plaintiff. It is further argued by ld counsel for the defendant that the plaintiff has suppressed the relevant and correct fact of the pendency of the above-said writ petition. It is further argued that in the said writ petition, the Hon'ble High Court of Delhi has set aside the order passed by the plaintiff regarding illegal termination of the defendant and has directed the plaintiff to reinstate the defendant in service with all consequential benefits with 50 % back wages for the period, she has not worked. It is further argued by ld counsel for the defendant that the base of both proceedings is the

illegal termination of the defendant from job by the plaintiff. It is further argued that against the decision of the abovesaid writ petition, the plaintiff has filed appeal, which is pending before Hon'ble High Court of Delhi and if this court passed any findings/orders in the present suit then that findings/orders may be in conflict with the findings of Hon'ble High Court of Delhi. So, he prays to the court to stay the proceedings of the present suit.

9. On the other hand, ld counsel for the plaintiff has submitted that the issue in both proceedings are different. Ld. counsel for the plaintiff further argued that before Hon'ble High Court of Delhi, the defendant had challenged the termination proceedings of the defendant. He further argued that in the present suit, the plaintiff is seeking decree for recovery of amount of unauthorized leaves taken by the defendant. He further argued that the subject matter as well as reliefs in both suit are different.

10. I have perused the case file.

11. In the writ petition filed by the defendant before the Hon'ble High Court of Delhi, the defendant has sought relief of quashing of memo of charge, enquiry report and order of removal of defendant. The prayer clause of defendant in the said writ petition is reproduced as under:

PRAYER

(i) To issue a writ of certiorari quashing and setting aside the impugned memorandum No. CO/HR/Disc./D-142/2016 dated 02.08.2016, inquiry report no. CO/HR/DISC/D-142/2016 dated 28.03.2017, order No. CO/HR/Disc./D-142/2016 dated 31.05.2017, where by the penalty of removal from service was imposed upon the petitioner, order No. CO/HR/DISC/D-142/2016 Dated 23.08.2017, where by the appeal of the petitioner was rejected and the order No. CO/HR/Disc./D-142/2016 dated 11.04.2018 No. CO/HR/Disc./D-142/2016, dated 06.12.2018 whereby by the petition for review preferred by the petitioner has been rejected.

(ii) To issue a writ of mandamus commanding the respondents to re-instate the petitioner back in service with all consequential benefits.

(iii) To allow the writ petition with cost.

(iv) To pass such order and further order which their Lordship of this Hon'ble High Court deem fit and proper.

12. The disciplinary authority of plaintiff has framed two charges against the defendant which are as follows:

Article- I

a) Ms Anju while applying for child care leave did not submit an affidavit which is mandatory requirement under the rules;

b) Ms Anju proceeded abroad without prior permission from the competent authority;

c) The child care leave sanctioned to Ms Anju w.e.f 25.04.2016 shall be deemed to be cancelled and thereby her absence from duty w.e.f 25.04.2016 is unauthorized.

Article-II

While working as DM (CC) and DM (Marketing) Ms Anju had submitted on 16.08.2011 and subsequently on 07.07.2014 giving false information regarding transactions made during the purchase of immovable property and submitted bogus documents.

13. The inquiry officer vide its report dated 28.03.2017, concluded both the charges to be proved against the defendant. Thereafter the disciplinary authority vide order dated 31.05.2017, passed punishment against defendant for removal of defendant from the service.

14. The defendant filed appeal against the order of punishment and the appellant authority vide order dated 23.08.2017, dropped the Article of charge no. II, however, maintained the order of punishment, i.e. removal from service fro the Article of Charge No. 1. Review application was also rejected by Reviewing authority vide order dated 30.07.2018. Hon'ble High Court of Delhi, remanded the matter back to reviewing authority with a direction to pass fresh directions after giving due opportunity to the defendant. Vide order dated 06.12.2018, the reviewing authority again rejected the Review Petition.

15. The relevant para of judgment of Hon'ble High Court of Delhi passed in the writ petition of defendant has been reproduced as under:

54. The appointing authority for the petitioner (E-4) is Director (HR) whereas, Executive Director who passed

the removal order is subordinate to it. In addition, penalty order is also vitiated on the ground that it could be based on the allegation which was not the part of charge sheet. When in the charge sheet, the leave sanctioned to the petitioner was deemed as cancelled and she was treated absent from duty for the period of sanctioned leave, in the penalty order, the absence period was treated from 26.10.2016 onwards.

55. Since it is opinion of the appellate authority that order of removal has been passed by the subordinate to the appointing authority, therefore, the inquiry proceedings and impugned order of removal of service is vitiated.

56. In view of above, I hereby set aside the impugned order dated 02.08.2016, inquiry report dated 28.03.2017, orders dated 31.05.2017, 23.08.2017, 11.04.2018 and 06.12.2018.

57. Consequently, the respondents are directed to reinstate the petitioner in service with all consequential benefits with 50% of the back wages for the period she has not worked.

58. Before parting from this petition, it is not in dispute that the petitioner had sought permission to go to China for treatment of her daughter but admitted fact is that she travelled to various countries and that is without taking prior permission from the respondents. Thus going to different countries without permission is a misconduct.

59. Accordingly, respondents are at liberty to initiate inquiry if deem fit by taking steps afresh by giving opportunity on being heard, to the petitioner.

16. The plaintiff has filed appeal against the above said judgment dated 5.11.2019 of Hon'ble High Court of Delhi before the Division bench of Hon'ble High Court of Delhi and vide order 25.11.2019, the Division Bench of Hon'ble High Court of Delhi has stayed the operation of the above said judgment, during the pendency of appeal.

17. In view of foregoing facts, it is evident that in the writ petition filed by the defendant & in the appeal filed by the plaintiff, the issue involved is termination of service of defendant, on the charge of unauthorized Leave w.e.f 25.04.2016, not submitting affidavit while applying Child Care Leave and proceeding abroad without prior permission from the competent authority. In the present suit, the issue to be determined is whether plaintiff is entitled to recover an amount of Rs. 6,85,344/- alongwith interest from the defendant. As per plaint, amount of Rs. 75,819/- as on 31.05.2017, is due against defendant on account of buy back charges of furniture. The plaintiff has also alleged that the amount of salary paid to the defendant on 88 days, when the defendant was on unauthorised leave is also due against the defendant. The plaintiff is claiming paid salary amount of unauthorised leave of 51 days w.e.f. 14.08.2014 to 25.03.2015 from the defendant. The unauthorised leave of this period is not in issue in above said writ petition and appeal before Hon'ble High Court of Delhi. Buy back charges of furniture are also not in issue before Hon'ble High Curt of Delhi.

18. Section 10 of the CPC states as follows;-

'Stay of suit: No Court shall 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 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 having jurisdiction to grant the relief claimed, or in any Court beyond the limits of established or continued by and having like jurisdiction, or before [the supreme court]'

19. In a case titled Anita Vashish Vs Tarun Vedi, CM(M) 980/2022, CM APPL 40877/2022, CM. APPL 40878/2022, CM APP. 40879/2022, the Hon'ble High Court of Delhi has held as under:

18. The law relating to Section 10 has been authoritatively expounded by the Supreme Court in its decisions in National Institute of Mental Health & Neuro Sciences (2005) 2 SCC 256 [LQ/SC/2004/1412 ;] (“NIMHANS”, hereinafter) and Aspi Jal v. Khushroo Rustom Dadyburjor (2013) 4 SCC 333 [LQ/SC/2013/379] (“Aspi Jal”, hereinafter).

19. Suits, pending before different courts, may often have overlapping issues. The result of one suit may often influence the outcome of another. The CPC contains various provisions to deal with such contingencies. Inter alia, where suits involved issues which are overlapping and where the outcome of one suit may materially affect another, the suits may be consolidated, in exercise of the jurisdiction vested by Section 151 of the CPC. The power to consolidate, as held in Mahalaxmi Cooperative Housing Society Ltd v. Ashabhai Atmaram Patel (2013) 4 SCC 404 [LQ/SC/2013/241] is, in fact, intended “to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action”. “Consolidation of suits is”, as the same decision holds, “ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses and the parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials”. Para 18 of the report in Prem Lala Nahata v. Chandi Prasad Sikaria (2007) 2 SCC 551 [LQ/SC/2007/128] delineates, precisely, the power of consolidation, as well as the occasion for its exercise, thus:

“18. It cannot be disputed that the court has

power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits. (See Halsbury's Laws of England, Vol. 37, para 69.)”

20. As against this, Section 10 of the CPC is a somewhat drastic provision, inasmuch as it brings the trial in the later suit to a complete halt. It eviscerates, therefore, in a manner of speaking, the right of the litigant to expeditious trial. The corridors of the court not being the most habitable of places, where one would choose to linger long, Section 10 is required to be construed strictly.

21. It is not necessary for this Court to enter into the niceties of the provision. As already noted, the provision has been examined in considerable detail by the Supreme Court in its decisions in NIMHANS (2005) 2 SCC 256 [LQ/SC/2004/1412 ;] and Aspi Jal (2013) 4 SCC 333, [LQ/SC/2013/379] which are regarded as authorities on the issue.

22. Para 8 of NIMHANS (2005) 2 SCC 256 [LQ/SC/1975/148] and paras 9, 11 and 12 of Aspi Jal (2013) 4 SCC 333 [LQ/SC/2013/379] read thus:

“NIMHANS (2005) 2 SCC 256 [LQ/SC/2004/1412 ;] :

“8. The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in

respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 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. The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical."

Aspi Jal (2013) 4 SCC 333 [LQ/SC/2013/379]

"9. Section 10 of the Code which is relevant for the purpose reads as follows:

"10. Stay of suit. – No court shall 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 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, or in any court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.—The pendency of a suit in a foreign court does not preclude the courts in India from trying a suit founded on the same cause of action.”

From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10 i.e. “no court shall proceed with the trial of any suit” makes the provision mandatory and the court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject-matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding.

11. In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether “the matter in issue is also directly and substantially in issue in previously instituted suits”. The key words in Section 10 are “the matter in issue is directly and substantially in issue in the previously

instituted suit”. The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed In our opinion, if the answer is in affirmative, the subsequent suit is not fit to be stayed. However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.

12. As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what “the matter in issue” exactly means As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where few of the matters in issue are common and will apply only when the entire subject matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue.”

(Emphasis supplied)

23. No doubt, both the decisions have underscored, as a “fundamental test”, for the purposes of Section 10 of the CPC, being whether, on a final decision reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Even so, both the decisions go on to observe that, in order for Section 10 to be applied, there must be complete identity of subject matter in both suits. It has been emphasized, in both the decisions, that the key expression in Section 10 are “directly and substantially in issue”, which have been contra-distinguished from the expression “incidentally or collaterally in issue”.

24. “Therefore”, as held in both the decisions “Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject matter in both the proceedings is identical”.

25. This aspect stands further clarified in *Aspi Jal* (2013) 4 SCC 333 [LQ/SC/2013/379] . In para 9 of the report in *Aspi Jal* (2013) 4 SCC 333, [LQ/SC/2013/379] the Supreme Court has held that “the basic purpose and the underline object of Section 10 of the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of “same cause of action, same subject matter and the same relief.” As a result, the effort, as per the said decision, as “to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendants from multiplicity of proceedings”.

26. Interestingly, in *Aspi Jal* (2013) 4 SCC 333, [LQ/SC/2013/379] the parties in all suits were the same. The courts in which the earlier suits had been instituted were competent to grant the relief sought in the latter suit. Even so, the Supreme Court observed that the issue remained to be adjudicated “as to whether the matter in issue is also directly and substantially an issue in previously instituted suit”. Underscoring, once again, the importance of the expression “directly and substantially in issue”, the Supreme Court went on to hold that, even if “many of the matters in issue are common, including the issue of whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code the entire subject matter of the two suits must be the same”. It was categorically held that Section 10 “will not apply where a few of the matters are common and will apply only when the entire subject matter of the controversy is same”.

27. Given the rigidity of this test, the fate of the present petition – and, indeed, of the petitioner’s application under Section 10 – was pre-ordained.

28. The reliefs sought in CS SCJ 612321/2016 and Civ DJ 699/2021 is obviously different. CS SCJ 612321/2016 sought a declaration that the Sale Deed dated 21st November 2003 was void ab initio. CS DJ 699/2021 sought a decree of possession, evicting the petitioner from the suit property. By no stretch of imagination can it be said that the reliefs sought in the two suits were identical.

29. Apart from sameness of relief, the two other indicia, required to be cumulatively satisfied in order for the trial of a later suit to be stayed under Section 10, is identity of cause of action and identity of subject matter.

20. In view of foregoing facts & discussions, it is held that subject matter as well as relief sought in the prayer clause of present suit is different from the subject matter and relief sought in the writ petition and it's appeal pending before Hon'ble High Court of Delhi, therefore, section 10 of CPC is not applicable in the present suit. There is also no substance for exercising power under section 151 of CPC for staying the present suit. Hence, the present application stands dismissed being devoid of any merit.

**Announced in the open court
On 13.11.2025**

**(SHIV KUMAR)
District Judge-02
West Distt. Court No. 127
Tis Hazari Courts, Delhi**