

ORDER BELOW EXH-129

1. By way of present application defendant prayed for stay of suit. It has been contended that the defendant has preferred Special Civil Application No. 5789/2017 in the Hon'ble High Court of Gujarat whereas dated 21-03-2017 Hon'ble Court allowed interim injunction as para 7(b) of application. It is further contended that land under dispute in SCA before Hon'ble High Court and present suit is one and same. Proceedings further with this matter means interference in proceedings of Hon'ble High Court which also amount to its contempt. Plaintiff has suppressed material fact in suit about pendency of SCA in Hon'ble High Court. Hence, prayed for stay of proceedings in present suit. Ld. Defendant No. 1 has advances written arguments vide EXH-132.
2. Plaintiff has objected present application and filed reply vide EXH-131. It is stated that defendant no. 1 falsely preferred present application just to prolong the litigation. After matter came to stage of defendant's evidence, he has not remained present for cross-examination. Present application is preferred on ground of sub-judice matter before Hon'ble High Court. It is contended that there is no stay on present suit by Hon'ble High Court. Facts of SCA and facts of suit are totally different. Present application is nothing but waste of judicial time. Hence, prayed for rejection of same.

ON MERTIS :

3. It is stated that proceedings further with this matter would amount to interference in order passed by Hon'ble High Court and would also amount to contempt. However, there is no specific stay order is produced by applicant which state that there is stay on present suit. Order of Hon'ble High Court in Special Civil Application No. 5789/2017 is of dated 21-03-2017. Suit appears filed on 15-03-2017. It is not case of applicant that plaintiff has filed suit only after stay granted by Hon'ble High Court in SCA. Further, Copy of SCA produced at Mark-130/1 indicates that it is filed under Article 226 of Constitution of India and present suit is for declaration. Parties to suit are different and even prayer is also different. Thus, principal of res sub-judice would not be applicable.

4. Record and proceedings of present suit indicates that right of evidence of defendant has been closed earlier which was even opened in the interest of justice by allowing defendant to produce their evidences. Then after for one or another reason defendant did not offered himself for cross-examination and preferred present application which is wholly meritless and frivolous. It is nothing but an attempt to prolong litigation. Hence, for above reasons following order is passed :

O R D E R

- Present application is rejected.
- No order as to costs.
- Defendant is directed to make himself present on next date without fail for cross-examination.

Pronounced today in open court on 29 October, 2021.

Date : 29-10-2021
Anand

C.V. Limbachiya
3rd Additonal JMFC, Anand
JUDGE CODE : GJ01556