

ORDERS ON I.A.NO.I

The defendant filed I.A.No.I to stay the further proceedings of this suit till the disposal of the Review Petition No. 192/2009 in Writ Petition No. 26797/2005 before the Hon'ble High Court of Karnataka.

2. On the other hand the plaintiff filed objection to the application and prayed to dismiss the application.

3. I have heard arguments on I.A.No.I by both side.

4. The present application is filed under section 10 and Sec. 151 of CPC. The plaintiff filed the suit against the defendant for vacant possession of the suit schedule premises. The defendant stated that he has filed application under form No. 7 A claiming occupancy right to the suit schedule property before the land tribunal, Sullia. The land tribunal without considering the referred rejected the application. Aggrieved by the said order the defendant preferred appeal before the Karnataka

Appellate tribunal Bangalore. The appellate tribunal confirm the order of land tribunal Sullia. Against the said order the defendant preferred writ petition before the Hon'ble High Court of Karnataka in W.P. No. 26797/2005(LR). The said writ petition also dismissed on 18-06-2008. Later on defendant preferred Writ appeal before the Division Bench of Hon'ble High court of Karnataka in Writ Appeal No. 1238/2008 and the Hon'ble High Court of Karnataka permitted the defendant to approach the single Judge to seek review of the order in Writ Petition No. 26797/2005. The defendant stated that the review petition 192/2009 in Writ Petition No. 26797/2005 is pending for adjudication before the Hon'ble High court of Karnataka. The plaintiff stated that the subject matter involved in the present suit and the said Review Petition are one and the same. If the suit is further proceeded which may leads to multiplicity of proceedings. Hence the defendant prayed to stay the further proceeding of the suit.

5. On the other hand the plaintiff denied all the averments made in the affidavit annexed to the application. The plaintiff contended that the

petitioner not produced any document prove the alleged facts of the affidavit. The alleged Review Petition No. 192/2009 is still pending and there is no order passed as to stay the proceedings of any suit. The defendant is not entitled to file application to stay the further proceedings of the above suit before this court. The defendant interested to seek relief of stay order. The defendant ought to have filed an application before the High Court of Karnataka and not before this court. In the absence of any stay order passed by the appellate authority filing the application for seeking relief of order of stay the proceedings of this suit is not maintainable. Hence the plaintiff prayed to dismiss the application.

6. A plain reading of Section 10 of CPC reveals that there must be previous suit between the parties to the suit with regard to the same title or subject matter. In such a case the trial of the subsequent suit can alone be stayed by the court. Admittedly there is no previous suit pending between the plaintiff and the defendant with regard

to the subject matter of the suit. The defendant claims that he has preferred writ before the Hon'ble High Court against the order passed by the land tribunal. The same is not previous litigation between the parties to the suit. Moreover the proceeding of this suit is also not stayed by the Hon'ble High Court of Karnataka in the said Writ Petition. As such the application has no merits. As such I proceed to pass the following:

ORDER

I.A no. I filed by the defendant under section 10 R/W Sec. 151 of CPC is rejected. Case Posted for plaintiff evidence by 25-09-2018.

(JAYAPRAKASH V.)
Civil Judge & JMFC.,
Sullia.