

Order below Ex.13.**(Passed on 04.07.2018)**

The present application is filed by the defendant under Section 10 of the Code of Civil Procedure (Hereinafter the C.P.C.) for stay of present suit.

2. In short the contention of the defendant is that he himself along with the other tenants have filed Special Suit No. 29/2012 in the Court of Hon'ble Civil Judge (Sr.Dn.) Khamgaon for declaration, permanent injunction and damages against the present plaintiff. The declaration is sought to the effect that the defendant and other tenants are lawful tenants in the shop premises and entitled for the protection under the law. The said suit has been filed prior to filing of the present suit. The issues involved in the present suit are substantially similar. The plaintiffs have denied the relationship of landlord and tenant and are claiming that defendants and other tenants are licensee and period of license is over. The issues involved in the present suit are substantially similar. Thus, the defendant has prayed to stay the present suit till the final decision of Special Civil Suit No. 29/2012.

3. The plaintiffs have strongly resisted the application by filing their say at Ex. 16. They have not disputed that the defendant along with other defendants have filed Special Suit No. 29/2012 before Hon'ble Civil Judge (Sr. Dn.) Khamgaon. Further, they have not disputed as the said suit being filed for seeking the relief of

declaration, permanent injunction and damages. They have denied remaining all contentions of the defendant. They contended that the issues involved in the present suit are not substantially similar to the issues involved in the Special Civil Suit No. 29/2012. Further, the reliefs claimed are totally different in both suits. Merely, the parties and the suit property are same is not a sole ground to stay the suit. Further, they contended that the defendant is prolonging the present suit by filing one and other applications. The provision of Section 10 of the Code of Civil Procedure is not attracted to the present suit. Thus, they prayed to reject the application.

4. Heard both advocates. Advocate for the defendant relied on
- a) *Lucky s/o. Hastimal Chandak v/s Govardhandas Ramgopal Chandak, 2011(4) Mh. L. J. 745,*
 - b) *Ravikumar Shrichandji Kalra and others v/s Pradeepsingh Sunderlal Chouhan and others, 2011(6) Mh. L. J. 515,*
 - c) *Padmabai w/o Bhaurao Patil v/s Shaikh Shahadulla Sk. Abdulla and another, 2010(7) Mh. L. J. 99.*

5. Per contra advocate for the plaintiffs relied on :

- a) *Ajit Singh v/s Sadhu Singh, 2004 CJ (Del) 24.*
- b) *National Institute of Mental Health & Neuro Sciences v/s C. Parameshwara 2004 CJ (SC) 880.*

6. Before advertng to the merits of the application let me consider the provision of Section 10 of the CPC. It states as under :

Sec-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 (Central Government) and having like jurisdiction, or before (the Supreme Court).

7. The object and scope of the provision has been held in various judgments of Hon'ble Apex Court and Hon'ble Bombay High Court. In the case of *National Institute of Mental Health and Neuro Sciences cited supra* wherein the Division Bench of Hon'ble Apex Court observed in para No. 8 as to the object of Section 10 of CPC as :

“ 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 to 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 applied 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 I 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.

8. In the course of argument advocate for defendant argued that the parties and subject matter in both suits are similar. The plaintiffs Gajanan Maharaj Sansthan is very powerful and interested to evict the tenants in order to occupy the premises. Thus, the defendant and other tenants have knocked the door of the Hon'ble Civil Judge (Sr. Dn.) Khamgaon for protection of their possession by filing Special Civil Suit No. 29/2012. The issues involved in the present suit are resemblance with issues involved in Special Civil Suit No. 29/2012.

9. Per contra, advocate for the plaintiffs submitted that the present suit is filed under the provisions of Maharashtra Rent Control Act 1999. The reliefs claimed in the present suit are totally different from the reliefs claimed in Special Civil Suit No. 29/2012.

Though the parties and subject matter are the same is not ground to stay the matter. He draws my attention to the object of the section which has laid down in the judgment of *National Institute of Mental Health and Neuro Science cited supra*. Thus, he prayed to reject the application.

10. I carefully consider the submissions of both advocate. It is not disputed fact before me that the defendant and other tenants have filed Special Civil Suit No. 29/2012 in the court of Hon'ble Civil Judge (Sr.Dn.) Khamgaon for the relief of permanent injunction and declaration. And the said suit has filed prior to the filing of the present suit. At this backdrop the previous back ground to file this suit for eviction against the defendant needs to be considered. The record of the case indeed shows that the plaintiffs Gajanan Maharaj Sansthan have firstly approached to the competent authority for eviction of the defendant and other tenants under Section 24 of the Maharashtra Rent Control Act. The said application was rejected by the competent authority. To that W. P. No. 2768/2015 was filed in Hon'ble High Court Nagpur Bench. Wherein Hon'ble High Court by its judgment dated 23.12.2015 observed that competent authority has no jurisdiction to entertain the application. And Hon'ble Bombay High Court has given the liberty to the plaintiffs to initiate the proceeding for eviction of the defendant in accordance with the law. Accordingly, the present suit has been filed under the provisions of Maharashtra Rent Control Act for eviction of the defendant.

11. Now coming to the aspect of reliefs claimed in both suits. Admittedly, Special Civil Suit No. 29/2012 is filed for the relief of declaration, permanent injunction and damages. In the said suit the defendant has sought the relief of declaration that he is lawful tenant of the shop premises. The present suit is filed under the provisions of Maharashtra Rent Control Act for eviction of the defendant. Thus, the reliefs claimed in both suits are totally different.

12. The record of the case shows that the defendant and other tenants have claimed themselves as a tenant in the proceeding before the Hon'ble Civil Judge (Sr. Dn.) Khamgaon in Special Civil Suit No. 29/2012. But the defendants have denied themselves as a tenant in the present suit. According to him he is licensee. And he is paying license fee to the plaintiff. Now this is controversy between both parties as to the relationship of landlord and tenant. As while passing order below Ex. 9 in respect of the application filed under Order 7 Rule 11 of CPC, I observed that the relationship between both parties as to the landlord or tenant and licensee or licensor will be decided at the time of final hearing. Rather, it requires the evidence. Because both parties are at a cloud over relationship. Now the question of landlord or tenant and licensee or licensor is not a direct and substantial issue involved in the suit. Rather, it cannot be termed as a substantial issue.

13. Thus, the suit filed by the defendant is for to retain his settled possession and which is main crux of the matter of Special Civil Suit No. 29/2012. Per contra, the eviction and obtaining the possession under the provisions of Maharashtra Rent Control Act is the main crux of the present matter. Thus, by no stretch of imagination it can be hold that the reliefs claimed in both suits are identical to each other. Thus, argument advanced by advocate for the defendant is not justifiable.

14. As I have already discussed supra that the object of the Section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of same matter in issue. The key words while interpreting Section 10 of CPC would be " *having jurisdiction to grant the relief claimed* , ". Thus, it is not sufficient that the parties are same or subject matter of the suits is same but the issues involved therein also should be same or substantially same and the relief which has been sought by the plaintiff in both suits also should be substantially same. Thus being a court of Civil Judge Junior Division, I am entertaining this suit under the provisions of Maharashtra Rent Control Act. And Honb'le Civil Judge (Sr. Dn.) Khamgaon is entertaining the suit in respect of the matter of protection of the possession and declaration of the defendant. Thus, certainly it cannot be hold that these both courts are exercising concurrent jurisdiction over the matters.

15. I have gone through the case laws adduced by advocate for defendant in case of *Lucky s/o. Hastimal Chandak, Ravikumar*

Shrichandji Kalra and others ,Padmabai w/o Bhaurao Patil v/s cited supra. The facts of the present case are not identical and similar with the facts in the above cited cases. Thus, with due respect it is not applicable to the present case. Further, citation relied by advocate for plaintiff in case of *Ajitsingh cited supra* is not applicable because the facts of the present case are not identical and similar with the facts stated in above cited case. Thus, with due respect it is not applicable to the present case.

16. On considering the aforesaid discussion, I come to the conclusion that the defendant has not satisfied the requirements to stay this suit under Section 10 of the CPC. Both suits are totally different. The reliefs claimed are totally different. Merely, because the parties and subject matter is same is not sole ground to stay the present suit. Thus, considering, the entire facts and circumstances I come to conclusion that this application has no merits. Thus, in the result, I pass following order,

: ORDER :

- 1) The application is hereby rejected.
- 2) Parties and their Advocate do take note of the order.

Place : Shegaon
Date: 04.07.2018

(V.V. Kulkarni)
Civil Judge Junior Division,
Shegaon, District Buldana.

