

IN THE COURT OF JT. CIVIL JUDGE JR. DN. AND J.M.F.C.,
KAMPTEE, DISTRICT-NAGPUR
(Presided over by Smt. S. A. Patil)

RCS No. 80/2015
Agrawal Bhawan Vs.
M/s. Motiram General
Stores and others.

ORDER BELOW EXH.63
(Passed on 11/02/2019)

This is an application filed by the defendants under Section 10 of the Code of Civil Procedure for stay of present suit till further order in RCS no. 63/2015 pending on the file of Civil Judge Junior Division, Kamptee. It is strongly opposed by the Ld. Advocate for the plaintiff by filing his reply below Exh. 66.

2] Perused the written notes of the argument filed by the Ld. Advocate for the plaintiff Shri. R.I.Agrawal vide Exh. 69. Heard the Ld. Adv. Smt. M.D.Bhambhwani for the defendants.

3] The defendants submitted that the present suit is filed for ejectment, possession of fair rent and recovery of mesne profit under Section 15 (1), 15(3) and 16(1),(g),(h),(i) and (j) r/w Section 33 of Maharashtra Rent Control Act, 1999. It is the contention of the defendants that the suit bearing no. RCS 63/2015 namely Motiram General Stores v. Agrawal Bhawan Society was filed on 18/06/2015 in respect of same suit property on earlier point of time against the present plaintiff. It is the further contention of the defendants that matter in issues in both the suits are substantially common and both the parties are litigating on several issues which are common and pending in

two different Courts. The Ld. Advocate for the defendants argued that in order to avoid possibility of contradictory verdicts by two different Courts it is necessary to stay the present suit. Therefore, Ld. Advocate for defendants prayed for stay of the present suit pending before this Court.

4] On the other hand the Ld. Advocate for the plaintiff in his reply vide Exh. 66 submitted that the matter in issues in RCS 63/2015 and RCS 80/2015 are not substantially common. He further argued that in RCS 63/2015 the plaintiff has sought simplicitor injunction from interfering possession of the suit property. However, the present suit is filed for eviction, possession, arrears of rent, fair rent and inquiry into mesne profit. He further argued that the decision of RCS No. 63/2015 cannot operate as res judicata in the present civil suit. Therefore, he prayed for the rejection of the application.

5] The Ld. Advocate for the plaintiff in support of his contentions relied upon the judgment of Hon'ble Apex Court in the case of **National Institute of Mental Health and Neuro Sciences v. Parameshwara AIR 2005 SC 242**. In this case the Hon'ble Apex Court held that fundamental test for applicability of section 10 is whether decision in previous suit operates as res judicata in subsequent suit. He also relied upon the judgment of the Hon'ble Supreme Court in the case of **Aspi Jal and another v. Khushroo Rustom Dadyburjor AIR 2013 SC 1712**. In this case the Hon'ble Apex Court held that matter in issue referred in Section 10 means entire subject matter. He further relied upon the judgment of the Hon'ble Madras High Court in the case of

Devanayagi Anmal and others v. Manicka Konar and another 2007(2) Civil LJ 756. In this case the Hon'ble High Court held that onus is heavy on the person pleading Section 10 to be attracted. Stay cannot be granted when suits arose out of totally different causes of action. He further relied upon the judgment of the Hon'ble Bombay High Court in the case of **Jayprakash Sitram Goel v. Sarubai Narayan Mulik and ors. 2018 (2) Mh.L.J. 509.** In this case the Hon'be High Court reiterated the conditions to be fulfilled for applicability of Section 10 of C.P.C.

6] Perused the record. After considering the rival pleadings of both the parties following points arise for my consideration. I have recorded my findings thereon for the reasons mentioned below.

Sr.No.	Points	Findings
1	Is the present bearing RCS no. 80/2015 required to be stayed as per Section 10 of the C.P.C. ?	No.
2	What order ?	Application is rejected.

REASONS

As to Point No. 1 -

7] At the outset, it is necessary to mention the provision of Section 10 of the C.P.C. It embodies the principle of res subjudice meaning thereby stay of suit. It reads as under-

“10. 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 the

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.”

8] From perusal of above provision it appears that for applicability of Section 10 of C.P.C. parties to both the suits must be same and are litigating under the same title, the matter in both the suits is directly and substantially the same, the previously instituted suit must be pending and the Court in which the previously instituted suit is pending has jurisdiction to grant the relief claimed in the subsequent suit. The onus lies upon the person who pleads for applicability of Section 10 of C.P.C.

9] Perused the record. It is an admitted fact that the suit bearing RCS no. 63/2015 is filed by the present defendants on 18/06/2015 and the present suit bearing RCS no. 80/2015 is filed on 25/07/2015. It seems that parties to both the suit are same. Furthermore, the suit bearing RCS no. 63/2015 is pending and the Court in which the suit bearing RCS no. 63/2015 has jurisdiction to grant the relief claimed in the present suit which is filed later on. However, the fact that whether the matter in both these suits is directly and substantially the same needs to be looked into for deciding the present application.

10] It is pertinent to note that the suit bearing RCS no. 63/2015 is filed for declaration and permanent injunction. On perusal of document no. 1 filed by defendants in the present

suit below list of document at Exh.32 it appears that cause of action for filing the suit bearing RCS no. 63/2015 has been pleaded in para no. 24 of the plaint. The cause of action for the suit bearing RCS no.63/2015 is refusal by present plaintiff to accept the rent and threats given to demolish the suit property. On the other hand the suit bearing RCS no. 80/2015 is filed for ejectment, possession, recovery of arrears of rent and fixation of mesne profit. In the present suit it is the contention of the plaintiff that the defendants Motiram General Stores stopped making payment of rent and refused to pay fair rent as per the prevailing market value. For application of Section 10 of C.P.C., as discussed above, entire subject matter of two suits must be the same. The provision under Section 10 of C.P.C. is not applicable where few of the matter in issue are common. After going through the entire record, I am of the view that the cause of action for both the suits is different. Matter in issue in the present suit is not directly and substantially in issue in the previously instituted suit bearing RCS no. 63/2015. Entire subject matter in both these suits does not seem to be identical. Therefore, I am of the view that the decision in the suit bearing RCS no. 63/2015 will not operate as res judicata in the present suit. Considering above reasons I answer point no. 1 in the “negative” .

As to Point No. 2-

11] In view of negative finding of point no. 1, this application being devoid of merit is liable to be rejected. Consequently, in answer point no. 2, I proceed to pass following order.

ORDER

- 1) The application is hereby rejected.
- 2) Costs in cause.

Kamptee

Date : 11/02/2019.

(Smt.S.A.Patil)
CJJD,Kamptee.