

ORDER BELOW EXH.11  
(Passed on 25/04/2025)

This application is filed by the defendant for stay of this suit as per Section 10 of CPC. Plaintiff filed reply below Exh.12.

2. Heard Adv. Shri. Kushwah for the plaintiff. None appeared on behalf of defendant. I passed order below Exh.6 on 03.04.2025 and kept the application for order.

3. This application is filed as per Section 10 of CPC. For the proper consideration of this application, I reproduced Section 10 here. Section 10 of CPC speaks 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 some parties, or between the parties under whom they or any of them 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 establish or continue 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 the suit founded on the same cause of action.”*

4. It is the case of the defendant that husband of defendant no.1 and father of defendant no.2 in this suit late Shri. Keshav Khante filed RCS No.1/2018 in the Court of Civil Judge, Junior Division, Kamptee against present plaintiff and others on the ground that plaintiff

of this suit along with others were trying to take the forcible and illegal possession of the suit property from the defendants. The Hon'ble court has already granted interim relief in RCS No.1/2018 and restricted the present plaintiff and others from interfering and dispossessing the present defendants from the suit property. The suit property in RCS No.1/2018 and the present suit is one and same. It is further mentioned in the application that the suit in which the matter in issue is directly and substantially in issue in the previously instituted suit is also in the present suit. Therefore, it is prayed that this suit may kindly be stayed.

5. Admittedly RCS No.1/2018 is the previously instituted suit. The present defendants filed copy of Exh.1 of RCS No.1/2018 along with list Exh.16. I have carefully perused the plaint in RCS No.1/2018. The prayer in RCS No.1/2018 is mentioned as follows -

- (1) To pass a decree of permanent injunction restraining the defendants jointly and severally from interfering, dispossessing or dis-mentaling the suit house of the premise bearing Grampanchayat Yerkheda House No.1243 situated at Mouza – Yerkheda, Tah. Kamptee, District Nagpur by themselves or through their agents or servants in any manner whatsoever without due process of law.*
- (2) To pass a decree of mandatory injunction directed the defendants jointly and severally to restore the water supply / connection of the suit house.*
- (3) To saddle cost of suit house to the defendants jointly and severally.*
- (4) To grant such other relief as may be deem, just and proper in the facts and circumstances of the case.*

6. Upon going through the above mentioned relief, it seems

that RCS No.1/2018 is filed for injunction against the defendants. That suit is filed by Keshav Narayan Khante admittedly the predecessors of present defendants against the present plaintiff along with other two persons i.e. Manohar Pandurang Wadibhasme, Premdas Kawduji Chakoli and Arjun Ramji Kumbhalkar. The present suit is filed by the present plaintiff Prabhakar jagoji Samrit against the present defendants for ejectment and possession, arrears of rent, damages and for mesne profit. It is prayed in the present suit that possession be given from the defendants to the plaintiff as per Section 16(1)(g)(h)(n) of Maharashtra Rent Control Act, 1999. The damages of Rs.16,300/- and rent of Rs.72,000/- is also prayed to be recovered from the defendants. It is also prayed that mesne profit is also be enquired against the defendants.

7. It is the condition president of Section 10 that the matter in issue of both the suits must be directly and substantially be the same. It is not in the present suit. RCS No.1/2018 is only for the injunction against the defendants. But in the present suit, the plaintiff of this suit admitted the possession of present defendants and prayed for the recovery of the possession i.e. ejectment of the defendants from the suit property. He also prayed for the recovery of the rent and damages from the defendants. He also prayed for the mesne profit.

8. In RCS No.1/2018 plaintiff prayed injunction against the defendant to grant the injunction against the defendant from dispossessing the plaintiff without following due process of law. The present suit of the plaintiff is actually for the ejectment of the defendants and therefore, it is the due process of law followed by the present plaintiff against the present defendants. Therefore, both the matters and

the issues pending between these two suits are substantially is different. Therefore, even though this suit is filed after filing of RCS No.1/2018, can not be stayed as the matters in issue in this suit is/are not directly and substantially in issue in RCS No.1/2018.

9. On the contrary while passing the decree in RCS No.1/2018, Court has to see who is in possession of the suit property, whether defendant dispossessing the plaintiff without following due process of law. But in the present suit, while passing the decree court has to frame the issues as regards the rent i.e. whether defendant is defaulter of rent, whether plaintiff is entitled for the possession of the suit property and ejectment of the defendants and whether plaintiff is entitled for the damages, mesne profit. On the contrary, plaintiff by filing this suit admitted the possession of the defendants over the suit property and filed this suit for the ejectment of the defendants from suit property. Hence, I pass following order -

**- ORDER -**

- 1] The application Exh.11 is hereby rejected. No order as to cost.

Kamptee  
Date : 25/04/2025.

**(Mohan R. Kamat)**  
Civil Judge, Junior Division,  
Kamptee.