

ORDER BELOW EXH. No. 78 IN R.C.S.NO. 50/2012**Dated: 06.02.20015**

This is an application under section 10 of the Civil Procedure Code.

2- Applicant submitted that in Civil Suit No. 142/2011, he has filed application Exh. No. 65 for de-exhibit Exh. 45. The said application Exh. 65 is rejected by this court and hence, he preferred revision against the said order which is pending before the Hon'ble High Court in Writ Petition No. 2059/2015. Hence, they prayed till the decision of that writ petition the proceeding before this court is stayed.

3- The defendants filed their say and submitted that the section 10 of the Civil Procedure Code, applies to the same proceeding and same suit is pending before this court or any other court. The Section 10 of the C.P.C., is not applicable as per the prayer of applicant. Hence the application of the applicant does not come under the perview of Section 10 of the Civil Procedure Code.

4- The applicant filed written argument and submitted that the revision pending before the Hon'ble High Court, is part and parcel of this proceeding, therefore, till the decision of writ petition the present suit be stayed.

5- Respondent submitted that, the applicant does not come under the perview of Section 10 of C.P.C., hence the application is not maintainable in the eye of law.

6- Perused the application alongwith submission of both the parties, it reveals that, the writ petition No. 2059/2015 is pending before the Hon'ble High Court, against the order passed below Exh. 65

in Civil Suit No. 142/2011. Till today the stay order, as well as any order from the appellate court is not received to this court. After passing the order below Exh. 65 sufficient time is granted to the parties to prefer an appeal and obtain any relief in their favour.

7- On plain reading of Section 10 of the Civil Procedure Code, it clearly reveals that any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, under whom they or any of them claim litigating for the title. Such suit is pending in any other court be stayed. In the present case both suits are pending before this court. There is no any documentary evidence that the another suit is pending for the same cause of action and same parties litigating the same cause of action. The case law cited by the applicant is also overruled. In such circumstances, I does not found any substance in the application of applicant. The application is merit-less, which is liable to be rejected. Hence the following order.

ORDER

The application Exh. 78 is rejected.

(Jaydeo Y.Ghule,)
Civil Judge Junior Divn.,
Purna, Dist. Parbhani.

Dated: 06/02/2015