



Order below exh. 10 in R.C.S. no. 46/2020

(Passed on 22/03/2022)
(CNR No. MHRT080004332020)

1. This is an application filed by defendant for stay of suit till completion of cross examination of informant in RCC No. 16/2019.
2. The defendant has prayed for stay of this suit on the ground that the RCC No.16/2019 is filed by plaintiff against defendant and the subject matter of both civil and criminal proceeding is similar and therefore after filing written statement the defense of defendant will be disclose and the same will be affect to the case of defendant.
3. The plaintiff filed his say at Exh. 10 and strongly resisted the application. It is contended by the plaintiff that, the RCC No.16/2019 is filed by plaintiff against by defendant for the offences punishable u/s 420, 465,467,468,417 r.w.34 of IPC. Defendant is defaulter of loan amount therefore this suit is filed for recovery of loan amount and RCC No. 16/2019 is filed by the state against defendant for the commission of cheating and forgery. However the question does not arise to disclose the defense of defendant after filing written statement. Hence, it prayed for reject the application.
4. Heard Smt. P.C.Chavan learned advocate for the defendant and Shri K.S. Sahatrabuddhe, learned advocate for the plaintiffs; at length.
5. Considering the pleadings, material on record and arguments advanced at bar, following points arise for my determination and I record my findings thereon, for the reasons discussed herein below.

<u>POINTS</u>	<u>FINDINGS</u>
[I] Whether this suit is liable to be stayed till completion of cross examination of informant in RCC No. 16/2019 as prayed for ?	No
[II] What Order ?	Application is rejected

REASONS

AS TO POINT NO. 1 :

6. The fact which is not disputed that, the RCC No. 16/2019 is filed by the state against defendant for the offences punishable under sections 420, 465, 467, 468, 417 r.w.34 of IPC and said criminal case is pending for trial in this Court.

7. This suit is filed for recovery for loan amount. It is case of the plaintiff that defendant has obtained gold loan from plaintiff bank. But they failed to repay the loan amount within stipulated time therefore, defendant's loan account is turned in to Non Performing Asset account. Thereafter, it is find that the defendant has given fake gold ornaments to obtain gold loan from bank. Therefore, plaintiff bank lodged FIR against defendant for cheating and forgery. On the basis of FIR police registered crime and filed charge sheet in RCC No. 16/2019.

8. On the contrary defendant submit that, the subject matter of this suit and RCC No. 16/2019 is same. However, if defendant filed his written statement in this suit then the defence of defendant will be disclose. Therefore, till completion of cross examination of informant in RCC No. 16/2019 this suit is required to be stayed.

9. Considering rival submissions of both parties, the question for determination is whether civil and criminal proceeding be conducted simultaneously in the same subject matter. After perusing record it is find that the subject matter of RCC No. 16/2019 is also the subject matter of this suit. Needless to say that, the standard of proof required in the civil and criminal proceeding are entirely different. Civil cases are decided on the basis of preponderance of probability whereas in a criminal case the entire burden lies on the prosecution to prove their case beyond reasonable doubt. No doubt it is clear that, in this suit plaintiff has to prove that, whether he is entitled to recover money from defendant and in RCC No. 16/2019 the burden lies on the

prosecution to prove the guilt of the accused beyond reasonable doubt. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of evidence adduced therein.

10. So far as, civil suit is concerned it is for the recovery of the loss caused to the plaintiff and criminal case is concerned it is affecting the right of a person in respect of his property. However the criminal proceeding may be given more significance than the civil proceeding. Both civil and criminal proceeding can be initiated by the victim simultaneously with distinct objective. In this regards I relay on the precedent of Hon'ble Supreme Court in the matter of **P.Swaroop Rani Vs. M.Hari Narayana reported in AIR 2008 SC 1884** wherein it is held that,

“It goes without saying that the respondent shall be at liberty to take recourse of such remedy which is available to him in law. We have interfered with the impugned order only because in law simultaneous proceedings of a civil and criminal case is permissible”.

11. Further I relay on the precedent of Hon'ble Supreme Court in the matter of **Syed Askari Hadi Ali Augustine Imam & Others Vs. State (Delhi Admn.) and Ors. Reported in AIR 2009 SC 3232** wherein also discussed the same issue and reiterated that,

“indisputably, in given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case.”

12. Further, I rely on the precedent Hon'ble Supreme Court in the matter of **Kishan Singh (D) through Lrs. Vs. Gurpal Singh and ors. Reported in A.I.R. 2010 S.C. 3624** wherein it is held that,

“Thus, in view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the

Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872 dealing with the relevance of previous Judgments in subsequent cases may be taken into consideration.”

13. Thus, in view of propositions of law laid down in above cited Judgments and the facts of circumstances of the case, the civil suit and criminal case may proceed simultaneously. The purpose of both proceedings are altogether different as FIR may be lodged for determination of penal action and civil suit may be filed for relief of the financial loss incurred due to the act of the other party. Thus, in such cases if the defendant file his written statement during pendency of criminal case the question of disclosing of his defense would not arise. However, in view of above discussion I safely hold that, there is no need to stay the civil suit till completion of cross examination of informant in RCC No. 16/2019. However, I answer point no. 1 accordingly and in answer to point no.2, pass the following order.

ORDER

[i] The application is rejected.

[ii] Costs on applicant.

Dated: 22/03/2022

(P. V. Patil)
Civil Judge Junior Division
Deorukh

- : C E R T I F I C A T E : -

Judgment/order in (Order below Exh. 10 in R.C.S. No. 46/2020)

I affirm that the contents of this Pdf file order are same word as per original order.

Name of Stenographer	:- S. S. Jagushte (Jr. Clerk)
Court Name	:- The Court of Civil Judge (J.D.) & Judicial Magistrate F.C., Deorukh
Date of decision	:- 22/03/2022
Order signed by PO. on	:- 22/03/2022
Order digitally signed by PO. on	:- 24/03/2022
Order uploaded on	:- 24/03/2022