

TS (Com) – 74/2024
TS – 25/2023(CC)

Present: Rupanjana Chakrabarti
Judge, Commercial Court at Rajarhat,
North 24 Parganas

CNR: WBNP19-000146-2023
J.O Code.WB00612

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27.03.2025

The learned Advocate for the plaintiff appears and files hazira.

Today is fixed for passing order in respect of the application under Section 12 read with Section 151 of the CPC filed by the defendant no.1.

Perused the case record, the instant application under Section 12 read with Section 151 of the CPC, the written objection and the materials on record.

Heard both sides.

The plaintiff filed the suit for declaration and consequential reliefs and the defendants appeared, and the defendant No. 1 filed a petition under Section 12 read with Section 151 of the Code of Civil Procedure praying for the dismissal of the present suit on the grounds of res sub-judice.

The contention of Defendant No. 1 in the present application under Section 12 read with Section 151 of the Code of Civil Procedure is that the plaintiffs filed the suit on 03.10.2023 seeking a declaration and consequential reliefs. The defendants/petitioners received the summons along with the plaint in the last week of February 2024. The plaintiffs/respondents also filed an application under the SARFAESI Act bearing S.A. No. 897/2023 before the Debts Recovery Tribunal III, against the same defendants, which is still pending.

As the loan account of the defendants exceeds Rs. 20,00,000/-, the defendants filed an application under Section 19 of the Recovery of Debts and Bankruptcy Act (RDBA) before Debts Recovery Tribunal III on 04.08.2023, numbered as O.A. 473 of 2023, which is still pending. On the same grounds, the plaintiffs filed the suit before this Court, annexing the same documents and pleadings as in the previous application before the Debts Recovery Tribunal.

The defendants contend that the doctrine of *res sub judice* applies in this matter. The purpose of the *res sub judice* doctrine is to avoid contradictory rulings on the same subject matter by preventing courts with jurisdiction from simultaneously trying two parallel matters. The doctrine of *res sub judice* refers to

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a matter that is still under consideration by the court. Section 10 of the CPC states that no court can entertain proceedings between the same parties on the same issues that are directly or indirectly in question in a pending suit before a competent court. The objective of the doctrine is to stay the proceedings when multiple cases involving the same parties and issues are filed. It aims to prevent wasting the court's time, avoid contradictory decisions, and protect parties from unnecessary litigation and harassment. As per Section 10, certain conditions must be met, including the existence of an issue at hand and the same parties involved in both the prior and subsequent suits. Additionally, the earlier suit must have been filed in a court with the jurisdiction to grant the desired relief.

The defendants further contend that a borrower cannot claim the benefit of an One-Time Settlement (OTS) as a matter of right. The Supreme Court has held that no court can interfere with an OTS agreement mutually agreed upon by the parties and extend the time granted for the repayment of the debt. The Supreme Court has also held that banks cannot be directed to reschedule payment timelines under the OTS scheme. Since the matter is already under consideration in one Court, a second Court with similar jurisdiction cannot proceed with a case involving the same issues and parties.

As the same subject matter is pending before a Court of law for adjudication between the same parties, this Court is barred from entertaining the present suit. As two cases are pending before the Debts Recovery Tribunal No. III, Kolkata, the plaintiffs are precluded from instituting another suit in respect of the same cause of action. Thus, the plaintiff shall not be entitled to institute a suit in any other court to which the CPC applies. The rationale underlying Section 10 of the CPC is to prevent endless litigation, wastage of the court's time, and abuse of legal procedure by litigants. Therefore, as the plaint attracts Section 12 of the CPC, it is automatically not maintainable. Given that a suit is pending before a competent court between the same parties and under the same title, no other court in India should entertain or try such a suit, to prevent two courts of concurrent jurisdiction from simultaneously adjudicating parallel suits involving the same matter and the same parties.

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Hence, it is prayed that, considering the above, this Court be pleased to dismiss the instant suit on the ground of *res sub judice* and pass any further orders as the Court may deem fit and proper and hence this petition.

The learned Advocate for the plaintiffs has contested the instant application by filing written objection.

The plaintiffs, in their written objection, states that the application filed by the defendant for dismissing the instant suit on the ground of *res sub judice* is not only not maintainable but has also been made with the intention to delay the trial of the instant suit, as the same application under Section 10 of the Code of Civil Procedure was previously rejected by this Court vide Order No. 8 dated 11.06.2024, in accordance with the law.

The application filed by the defendant is vexatious and malicious in nature.

Amongst other reliefs, the plaintiff filed the instant suit for:

(i) A decree for declaration that the letter dated 18.07.2023, thereby rejecting and/or canceling the One-Time Settlement (OTS), is void, bad in law, and a nullity.

(ii) A decree for declaration that the OTS sanctioned on 14.12.2022/15.12.2022 is still valid and subsisting, and that the defendant is bound to provide an extension in terms thereof.

The plaintiffs contend that the instant suit arose out of the illegal cancellation of a subsisting contract by the defendant bank. The matter is neither directly nor substantially in issue in any previously instituted suit, nor can it be tried under the SARFAESI Act, 2002 or the Recovery of Debts and Bankruptcy Act, 1993 by the Learned Debts Recovery Tribunal or any other statutory tribunals, except for the competent Civil Court having jurisdiction over the matter in issue.

This Court has/had the absolute jurisdiction to decide the veracity of the subsisting contract dated 14.12.2022/15.12.2022 executed by and between the parties and its cancellation. Therefore, the instant suit shall not operate as either *res sub judice* and/or *res judicata* over and above any other subject matter which is not directly and substantially in issue in any previously instituted suit or proceedings before any forum of law.

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The plaintiffs/respondents vehemently deny and dispute all the facts averred by the defendants in the instant application save and except what have been expressly admitted by him and/ or that which are the matters on record.

The plaintiffs/respondents inter-alia deny and dispute that on the same cause of action, two cases are pending before the Learned Debts Recovery Tribunal at Kolkata, or that the rationale underlying the provisions of Section 12 of the Code of Civil Procedure applies to these proceedings, or that this Court lacks jurisdiction to try the instant suit, as alleged or at all.

It is submitted by the plaintiffs that the defendant bank, instead of filing written statements in due course, has been filing frivolous applications with the sole motive of delaying the instant proceedings and harassing the plaintiffs. The self-same application, under the guise of a Section 10 application, has previously been rejected by the Court on the ground of withdrawal. Therefore, this application, with nearly identical pleadings, ought to be rejected with exemplary costs.

Hence, the plaintiffs prayed before this Court that the prayers made by the defendant no.1 in the instant application deserves to be dismissed with costs.

Considering the facts and circumstances of the case, the plaint, the instant application under Section 12 read with Section 151 of the CPC, the written objection and the materials on record, as well as the submissions of the learned Advocates for the two contesting sides it appears that, the provision of Section 12 of the CPC runs thus :-

“Section 12. Bar to further suit. - *Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.*”

In the instant application the defendants have not specifically mentioned about the rules except res sub-judice under Section 10 of the CPC which preclude the plaintiffs from instituting the instant suit. So far as Section 10 of the CPC is concerned, it appears that the said Section is related to stay of suit and it does not bar the institution of the suit. The bar is only on *proceeding with the trial* of the suit subject to certain conditions and there is no embargo on institution. In the

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present context, prima-facie, there is no justification for calling the institution of the suit in question. It appears that the defendants are resolved to halt the progress of the instant suit by filing several petitions touching the questions of maintainability and proceeding of the suit. As such, having filed a stay application vide Order No.6 dated 07.03.2024, the defendants have “not pressed” the same on 11.06.2024 vide Order No.8. Another application filed by the defendants under Order VII Rule 11 read with Section 151 of the CPC praying for rejection of the plaint is already pending being filed on 12.02.2024. In the meanwhile, on 11.06.2024, the defendants have come up with the instant application under Section 12 read with Section 151 of the CPC contending that the institution of the instant suit is precluded by rules. The instant petition is evidently dilatory.

In the instant application the question at hand primarily revolves around the applicability of the doctrine of *res sub judice* in the present matter. The defendants, in their application, contend that the suit filed by the plaintiffs is barred under Section 10 of the Civil Procedure Code on the grounds that similar issues are already under consideration before the Debts Recovery Tribunal, and therefore, this Court should refrain from entertaining the suit. The defendants’ reliance on the principle of *res sub judice* is primarily based on the assertion that the issues raised in this suit are identical to those being heard in the proceedings before the Debts Recovery Tribunal, and as such, the present suit ought to be dismissed.

On the other hand, the plaintiffs have filed a written objection, asserting that the defendants’ application is not only without merit but also vexatious and intended solely to delay the trial of the suit. The plaintiffs claim that the issues raised in the present suit do not overlap with those pending before the Debts Recovery Tribunal and are distinct in nature. This suit pertains specifically to the validity and subsistence of the One-Time Settlement (OTS) agreement and its cancellation, which is not an issue being adjudicated in the previous proceedings. The plaintiffs further submit that this Court has the jurisdiction to adjudicate the matter, and thus the doctrine of *res sub judice* is inapplicable.

After careful scrutiny of the facts and the law, it is evident that the doctrine of *res sub judice* applies only when the matters involved in the two proceedings are identical in subject matter and the issues are substantially the same. Section 10 of the CPC clearly prohibits the proceeding with the trial of a subsequent suit if a

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previous suit involving the same parties and the same issues is already pending before a competent court. The objective of this provision is to prevent the waste of judicial time, avoid contradictory judgments, and prevent harassment to the parties by subjecting them to multiple suits involving the same cause of action.

In the present case, the plaintiffs have sought a declaration that the letter dated 18.07.2023, which allegedly cancelled or rejected the OTS agreement, is void, bad in law, and a nullity. The plaintiffs further seek a declaration that the OTS sanctioned on 14.12.2022/15.12.2022 is still valid and subsisting, and that the defendants are bound to provide an extension in terms of the agreement. These are issues related to the validity of the contract between the parties, being distinct from the issues that are dealt with in the proceedings before the Debts Recovery Tribunal. The matters before the Tribunal pertain to recovery proceedings under the SARFAESI Act and the Recovery of Debts and Bankruptcy Act, specifically the enforcement of debt recovery. While the financial relationship between the parties may be similar, the underlying cause of action in this suit pertains to a contractual dispute over the validity and continuation of the OTS agreement, which is not a matter of recovery but one of declaration and consequential reliefs arising from the cancellation of the OTS agreement by the defendant.

The defendants have also sought to invoke the doctrine of *res sub judice* by arguing that the suit filed before this Court involves the same subject matter as the proceedings before the Debts Recovery Tribunal. However, this argument overlooks the fact that the plaintiffs are not merely contesting the recovery of debts but are challenging the legal validity of the defendants' action in canceling the OTS agreement. The disputes before this Court are focused on the terms of the settlement agreement and the defendants' obligations thereunder, which is a matter of contract law and civil dispute, whereas the proceedings before the Debts Recovery Tribunal are concerned with the enforcement of payment and recovery of dues, which fall under the domain of statutory recovery laws.

The instant suit does not relate to the enforcement of the debt recovery process or rescheduling payment timelines.

The plaintiffs have also denied that the doctrine of *res sub judice* applies, asserting that the matters before the Debts Recovery Tribunal and this Court

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involve different issues, with no identity of cause of action. The plaintiffs contend that this Court has exclusive jurisdiction to decide the issue related to the cancellation of the OTS agreement, as it pertains to civil contractual obligations and is not governed by the statutory provisions of the SARFAESI Act or the RDBA. In this regard, the plaintiffs' contention appears to be legally sound, as the disputes raised in the present suit are not directly related to the recovery proceedings or the enforcement of debt but concern the validity of a specific contractual agreement.

Having considered the arguments of both parties, this Court is of the opinion that the doctrine of *res sub judice* does not apply in the present case. It appears that the defendants have sought to urge the ground of stay/res sub-judice contemplated under Section 10 of the CPC in the instant application under Section 12 read with Section 151 of the CPC though the defendants themselves have earlier not pressed the application for stay under Section 10 of the CPC vide the Order No.8 dated 11.06.2024. This step is self-contradictory and not permissible under the law.

Last but not the least, it appears that Section 10 of the CPC has no manner of application in the instant application under Section 12 read with Section 151 of the CPC as Section 10 relates to "the matter in issue" between the same party in the present suit and the previously instituted suit. As the defendants have not filed any written statement in the instant suit as yet, there is no scope of determining the matters in issue. The contention of the defendants can be gathered only from the averments made in the instant application and not through the pleadings as the defendants have not filed the written statement. The questions raised in this suit are distinct from those pending before the Debts Recovery Tribunal, and the matter pertains to a contractual dispute that this Court has jurisdiction to adjudicate. Accordingly, the defendants' application for dismissal of the suit on the grounds of *res sub judice* is without merit and deserves to be rejected.

Hence, the application under Section 12 read with Section 151 of the CPC dated 11.06.2024 filed by the defendant no.1 is **rejected** on contest without cost.

Fix 20.06.2025 for hearing of the application under Order VII Rule 11 read with Section 151 of the CPC.

Written objection if any, in the meantime.

Sd/- Rupanjana Chakrabarti
Judge
Commercial Court,
Rajarhat, North 24 Parganas