

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.28 of 2024

1. Sri Anil Kumar Saha,
2. Sri Ajit Kumar Saha,
3. Sri Arun Kumar Saha,

All are the sons of Lt. Chanmohan Saha,

4. Smt. Bakul Rani Saha, W/o Lt. Gour Saha,
 5. Smt. Arpita Saha, D/o, Lt. Gour Saha, W/o, Sri Rupak Saha,
- Both are the residents of G.B Hospital Road, P.O- Agartala, P.S- West Agartala, Dist.- West Tripura.

All are the partners of M/S. Ashoke Petroleum Agency. Having its office at Durgabari Road, P.O- Agartala, P.S- West Agartala, Dist.- West Tripura.

..... Petitioner(s).

Versus

1. Tripur India Pvt. Ltd., Registered Company, C/o, Haridas Saha, East Thana Road, Madhya Banamalipur, P.O- Agartala, West Tripura.
2. UCO Bank, Represented by Zonal Manager, Central Road, Agartala-799001.
3. ASREC India Ltd., A company having its registered office at Solitaire Park, Building No.2, Unit No. 201, 202 A, Ground Floor, Andheri Garakpur Link Road, Chakla, Andheri East, Mumbai.
4. Sri Swapan Chandra Dey, S/o, Lt. Birendra Chandra Dey, Resident of Old Kalibari Lane, Krishnanagar, P.S- West Agartala, Tripura (W).

..... Respondent(s).

For Petitioner (s) : Mr. S.S. Debnath, Advocate.

For Respondent(s) : Mr. S.M. Chakraborty, Sr. Advocate,
Mrs. P. Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

19/09//2024

Petitioner herein is the defendant No.1 in T.S. 97/2018 instituted by respondent No.1-Tripura India Pvt. Ltd. herein for a declaration, khash possession and for perpetual injunction of the suit land under Section 34, 38 and Section 5 of the Specific Relief Act, 1963. The defendant No.1 in TS No. 97/2018 filed an application under Section 10 read with Section 151 of the

CPC seeking stay of the TS No. 97/2018 till disposal of TS No.59/2003. TS No.59/2003 was filed by Indian Oil Corporation for specific performance of the contract of sale of land. The petition was considered by the learned trial Court of Civil Judge (Sr. Div.), Court No.4, Agartala, West Tripura and dismissed vide order dated 15.03.2024 impugned herein. The operative part of the impugned order dated 15.03.2024 is extracted hereunder:

“Heard both the sides.

Considered.

The petition filed under Section 10 of CPC is pending for long for disposal for the purpose of hearing by the contesting sides.

In such circumstances, the Defendant No. 6 is not maintainable and as such stands rejected.

Now as we enter to appreciate the filed under Section 10 of CPC we find that the suit bearing No. 59 of 2003 was originally filed by Indian Oil Corporation Ltd. against the 11 nos. of Defendants including the Plaintiff of the present suit Tripur India Private Ltd.

On the other hand, the present suit is filed by the Tripur India Private Ltd. against 08 nos. of Defendants but the Plaintiff of the suit bearing No. TS 59 of 2003 i.e. Indian Oil Corporation Ltd. was not incorporated as a party in the suit.

It is also found that the suit bearing No. TS 59 of 2003 was filed by the Plaintiff Indian Oil Corporation Ltd. seeking relief of Specific Performance of Contract. Whereas the present suit is filed by the Tripur India Private Ltd. against the Defendants were the said Indian Oil Corporation Ltd. is not a party seeking relief for recovery of possession.

Now before adjudging the merit of the said petition by the Defendant Petitioner No. 1 Sri Anil Kumar Saha it would be prudent to re-visit the relevant provision laid down under Section 10 of CPC which runs as follows:

"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 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.

Explanation.-- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action".

Now from the bare perusal of the relevant provision of law it appears that the object of the Section 10 of CPC is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief.

Now to bring two suits in the ambit of Section 10 of CPC the following conditions must be fulfilled:-

i. Two suits: The first condition for the application of the doctrine of *res sub judice* is that there must be two suits one previously instituted and other subsequently instituted.

ii. Matter in issue: The matter in issue in both the suits must be same.

iii. Same parties: The provision of Section 10 can be invoked if the suits are between the same parties.

iv. Pendency of suit in Indian Court :- In order that this section may apply, it is necessary that the previously instituted suit must be pending in the same court in which the subsequent suit is brought, or in any other part of India, or in any Country beyond the limits of India established or continued by the Central Govt.

v. Same Relief: The trial of subsequent suit can be stayed only where the Court trying the previous suit has jurisdiction grant to relief asked for in the subsequent suit.

Herein the present case at hand, as discussed above we find that on the place of the record the parties of the two suits are different and the Defendant Petitioner No.1 did not state anything to explain his contention regarding the parties of the two suits are same.

It is also found that the relief sought in the two suits are of different nature and therefore does not attract the relevant conditions of Section 10 of CPC.

Situated this, I found the petition dated, 25-08-2022 filed under Section 10 of CPC to be read with Section 151 of CPC by the Defendant No. 1 is devoid of merit and as such stands rejected.

From the perusal of the case record, it appears that the originally the suit was pending at the stage of filing of original documents by the Defendant Nos. 1 to 5 and Proforma Defendant No. 6 & 7 and Plaintiff/ Step by the Proforma Defendant No. 8 before the petition filed under Section 10 of CPC to be read with Section 151 of CPC which was kept reserved for hearing/order.

Now, after disposal of the aforesaid petition filed under Section 10 of CPC to be read with Section 151 of CPC the present suit will commence to proceed from the stage at which it was originally pending for.

Fix 13-05-2024 for filing of original documents by the Defendant Nos. 1 to 5 and Proforma Defendant No. 6 & 7 and Plaintiff/Step by the Proforma Defendant No. 8.

[2] Respondent-Tripura India Pvt. Ltd. has appeared on notice and strongly contested the case. Mr. S.M. Chakraborty, learned senior counsel for respondents submits that none of the ingredients of Section 10 of the CPC are made out since TS No.59/2003 was instituted by the Indian Oil Corporation against the purchasers of the original defendants and the present respondent No.1 was added as a defendant later in 2019 since he had purchased the suit property in an auction under the SARFAESI Act. A default of loan was committed by the purchasers

from the original owner against the UCO Bank, Agartala Branch. The petitioner herein has not been impleaded as a party in TS 59/2003 though he claims to be the agent of the Indian Oil Corporation. TS No.97/2018 has been preferred by the respondent No.1 for eviction of the petitioner herein in view of observations made by this Court in CRP No.37/2004. Therefore, neither are the issues in both the suits directly and substantially the same nor they are being agitated between the same parties or any of them litigating under the same title.

[3] Learned counsel for the parties have advanced arguments on the correctness of the impugned order. However, after some arguments learned counsel for the petitioner, on instructions, seeks permission to withdraw the instant petition.

[4] Learned counsel for the respondents does not have any objection to that.

[5] In view of the prayer made, the instant petition is dismissed as withdrawn. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ