

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 1272 OF 2014
IN
SUIT NO. 2067 OF 2007**

Jayantilal Khandwala & Sons Pvt. Ltd. ..Applicant/(Orig.deft.no.1)

IN THE MATTER BETWEEN :

Falcon Brokerage Private Limited .. Plaintiffs
Vs.

Jayantilal Khandwala & Sons Pvt. Ltd.
& Anr. .. Defendants

Ms.Lara Jesani i/b M.Mulla Associates for plaintiffs.
Mr.Ashish Kamath a/w. Ms.Mridul Kawatra i/b Dhru & Co. for defendants
no.2.
None for the applicant.

**CORAM : K.R.SHRIRAM, J.
DATED : 17TH OCTOBER, 2015**

P.C.

1 This notice of motion is taken out on behalf of the defendant no.1 for stay of the present suit until the disposal of the summary suit no.2392 of 2004 where the defendants have been given unconditional leave to defend. The applicant in this suit is defendant no.1 in the summary suit. Defendant no.2 in this suit is the plaintiff in the summary suit and the plaintiff in this suit is defendant no.2 in the summary suit. Nobody is present for the applicant. The counsel for the plaintiffs stated that they will submit to the orders of the Court. The counsel for defendant no.2 opposed the notice of motion on the ground that this notice of motion is misconceived.

2 The provision regarding stay of suit under the Code of Civil Procedure, 1908 (CPC) is covered under Section 10 of CPC reads as under :

10 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 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.

Therefore, No Court shall proceed with the trial of any suit in which (a) the matter in issue is also directly and substantially in issue in a previously instituted suit; (b) the previously instituted suit is 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. These are the two pre-conditions which have to be met before the Court decides to stay any suit. Only thing common I find between the two suits are the parties though they are positioned differently in both the suits.

3 As regards whether the issue in this suit and the summary suit are

directly and substantially same, the answer is 'no'. In the summary suit, the plaintiff (defendant no.2 herein) is claiming against defendant no.1 (also defendant no.1 herein) to repay the incorporate deposit, after adjusting the security against the plaintiff in this suit had given to defendant no.2 as security after the amount lent by defendant no.2 to defendant no.1. The present suit is to recover the amount which defendant no.2 had recovered from the sale of the shares pledged by the plaintiff on behalf of defendant no.1. Therefore, in my view, the issue in this suit is basically an indemnity action whereas, the issue in the summary suit is for recovery of inter-corporate deposit. Therefore, one cannot say that the issue in this suit is directly and substantially an issue in the summary suit. Therefore, as the pre-condition of Section 10 of CPC is not met, this suit cannot be stayed. The notice of motion stands dismissed.

4 The counsel for the plaintiffs and defendant no.2 state that this suit and the summary suit have been getting listed together. They also state that the pleadings in both the suits are complete. Issues in summary suit have already been settled. This suit, therefore, be shown for issues on 16.11.2015. In the meanwhile, parties to file their respective affidavit of documents and complete discovery and inspection.

(K.R. SHRIRAM, J.)