

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.7103 of 2012 (O&M)

Date of decision: 08.12.2015

Indira Dang and another

.....Petitioners

versus

Dr.Ranjit Khanna and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sandeep Verma, Advocate for the petitioners
Mr.Sanjeev Sharma, Advocate for respondent Nos.1 to 3
Mr.Rahid Sud, Advocate for respondent Nos.7 to 11

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 1.8.2012, passed by the learned Additional Civil Judge, Senior Division, Khanna, vide which, suit filed by the plaintiffs/petitioners was stayed under Section 10 CPC pending the disposal of previous suit titled Dr.Ranjit Khanna versus Aaj Tak.

I have heard learned counsel for the parties and have also carefully gone through the file.

In order to attract Section 10 CPC, the following ingredients are to be met:-

1. *The matter in issue is directly and substantially in issue in the previously instituted suit.*
2. *Parties are same or parties under whom or any of them*

claim litigating under the same title.

3. The Court has jurisdiction to decide the matter.

The copies of the two suits are on the file, which show that Dr.Ranjit Khanna and others filed a suit against Aaj Tak Channel and other media concerns as well as present petitioner Indira Dang and Kuldeep Dang, claiming Rs.2,02,40,000/- as damages for defaming them. It is stated that one Amarjit Dang patient was treated by the plaintiffs for kidney stone with non-functioning of right kidney. Amarjit Dang died. Therefore, on 25.7.2007 and 26.7.2007, defendant Nos.6 to 9 and 11 along with their associates numbering about 50 persons formed unlawful assembly in the premises of plaintiff No.4 and started raising slogans against the plaintiffs and passed derogatory remarks against them saying that they have stolen the kidney of patient Amarjit Dang. Defendant Nos.6 to 9 and 11 along with their associates called the plaintiffs as *haiwan*, *kidney chor* and levelled other false allegations. Due to such allegations, reputation of the plaintiffs have been damaged for which, the damages are claimed.

In the second suit, the legal heirs of said Amarjeet Singh and others have filed a suit for recovery of Rs.20,00,000/- on the ground that said Amarjit Dang was treated with medical negligence by Dr.Ranjit Khanna and others. As a result of which, he died. Therefore, they are entitled to damages.

The perusal of pleadings itself shows that basis of the claim in both the cases is different. In the first suit, the plaintiff is required to prove that he has been defamed, whereas in the second suit, the plaintiffs are required to prove medical negligence. Though

some of the facts may intermingle but the ingredients of Section 10 CPC are clearly not attracted in this case. Some of the parties are people from the media and media channel, who are not party in the second suit.

Learned counsel for the respondents doctors have argued that same subject matter is involved as in the previously instituted suit. Plaintiffs will be required to prove that they treated the patient with care and skill and no medical negligence was involved and in the second suit, the plaintiffs will be required to prove medical negligence.

I do not agree with the said contention. In order to succeed in suit for damages for defamation, the ingredients to be proved are entirely different than the ingredients to prove the medical negligence. The authority of the Hon'ble Supreme Court in Dr.Aloys Wooben & another v. Yogesh Mehra and others, 2014(3) Civil Court Cases 685 (SC) therefore, is not attracted in the present case. The plaintiffs in the second suit had no occasion to make a counter claim in the said suit. Therefore, the second suit filed by the present petitioners is not barred under Section 10 CPC.

It being so, the impugned order is not sustainable in the eyes of law and is set aside. The trial Court is directed to proceed with the case. However, it is desirable that both the cases are tried by one Court.

The revision is accordingly allowed.

08.12.2015
gk

(Kuldip Singh)
Judge