

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9055 OF 2017

Mr. Zain Aziz Shaikh .. Petitioner
vs.
Mrs. Swati Satish Talim & Anr. .. Respondents

Mr. Amogh Singh i/b. D. P. Singh for Petitioner.
Mr. A. S. Pal with Mr. Mudit Gupta i/b. Mr. Siddharth Mehta for
Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.
DATE: 08 AUGUST 2017

P.C :

1] Heard Mr. Singh for the petitioner and Mr. Pal for the respondent.

2] The challenge in this petition is to the judgment and order dated 20th March 2017 made by the Ad-hoc District Judge – 2, Pune, allowing the revision petition instituted by the respondents and setting aside order dated 1st July 2014 made by the 3rd Additional Judge, Small Causes Court, Pune, by which the 3rd Additional Judge had stayed further proceedings in Regular Civil Suit No. 325 of 2012, instituted by the respondents for the eviction of the petitioner from the suit premises.

3] Mr. Singh, learned counsel for the petitioner submits that the

two suits involve the same parties and the same suit property. There is an imminent possibility of conflicting judgments, in case, the two suits are permitted to proceed simultaneously. He submits that no prejudice whatsoever will occasion the respondents if the second suit is stayed pending adjudication of the first suit, which is Regular Civil Suit No. 25 of 2011 pending in the Court of Civil Judge, Junior Division at Pimpri. He submits that the learned 3rd Additional Judge had correctly appreciated the parameters of section 10 of the CPC and the revisional court has clearly exceeded jurisdiction in interfering with the 3rd Additional Judge's order dated 1st July 2014.

4] Mr. Singh in the alternate submitted that this is a fit case for invocation of the provisions of section 24 of the CPC and order consolidation of the two suits, in the interests of justice. He relies upon the case of ***Gurdeepsingh s/o. Gopalsingh Bagga & Ors. vs. Gurucharansingh s/o. Gopalsingh Bagga***¹, wherein, according to him, such a course of action was adopted. Again, Mr. Singh submits that the consolidation of the two suits will occasion no prejudice whatsoever to the respondents and therefore, such a course is required to be adopted in the present case.

5] Mr. Pal, learned counsel for the respondents submits that the first suit, which is instituted by the petitioner against the

1 2014 (3) Mh.L.J. 935

respondents seek decree of specific performance. The second suit, which is instituted by the respondents against the petitioner seeks eviction of the petitioner on the grounds that the petitioner was a licensee and the licence has come to an end by efflux of time. Mr. Pal submits that the two suits and the cause of action therein, have no link with one another and therefore, the parameters of section 10 of the CPC are clearly not attracted. He submits that the two suits can proceed at their pace and there is no possibility of any conflicting decisions.

6] Mr. Pal, relying upon the decision of the Division Bench in the case of ***Manilal Premji Gala vs. Boman P. Irani & Ors.***² submits that for the provisions in section 10 of the CPC to be attracted, it is necessary that the court entertaining the subsequent suit should have jurisdiction to grant relief claimed in the first suit. Mr. Pal points out that the Small Causes Court, which has the exclusive jurisdiction to decide suits between licensors and the licensees, lacks jurisdiction to entertain or decree a suit for specific performance. On this ground also, Mr. Pal submits that the learned 3rd Additional Judge's order dated 1st July 2014 was without jurisdiction and the same was rightly interfered with by the Ad-hoc District Judge – 2, Pune in his judgment and order dated 20th March 2017.

2 2001 (2) ALL M.R. 634

7] By way of rejoinder, Mr. Singh, apart from reiterating his original submissions has drawn my attention to the draft issues proposed by the respondents herein in the first civil suit. He points out that the proposed issue no. 7 reads as follows :

“7. Whether Defendant proves that there is Licensor – Licensee relationship between Defendant and Plaintiff?”

8] On basis of the aforesaid, Mr. Singh submits that in case issue no. 7 is decided to hold that there is no licensor or licensee relationship between the parties, then, the second suit instituted before the Small Causes Court would clearly not be maintainable. Mr. Singh submits that in order to avoid conflicting judgments, it is necessary that powers under section 10 of the CPC are exercised. In the alternate Mr. Singh submits that powers under section 24 of the CPC may be exercised, the two suits may be consolidated and ordered to be tried together.

9] Rival contentions now fall for my determination.

10] The petitioner, in the first suit i.e. Regular Civil Suit No. 25 of 2011 instituted by him, has applied for the following substantive reliefs:-

(i) This H'ble Court may kindly by order of permanent

injunction restrained these Defendants, their agent or any other person claiming through them from giving threats to the Plaintiff.

(ii) It be declare that the Defendants having obtained the advance of the total consideration have no right to rescind from the contract of sale and or claim the possession of suit property.

(iii) These Defendants may kindly upon accepting the balance consideration price may kindly be directed to execute the Sale deed of the suit property in favour of the Plaintiff and same be registered before the Sub Registrar as per rule.

(iv) That in alternative the Court Commissioner may kindly be appointed and who after obtaining the balance amount from the Plaintiff be directed to execute the sale deed of the suit property in favour of the Plaintiff and registered the same with sub registrar as per rule.

11] The first suit instituted by the petitioner is premised on the basis of some agreement between the petitioner and the respondents, in terms of which, the respondents have alleged to have agreed to sale / transfer the suit premises to the petitioner. In such a suit, *prima facie*, the issue in relation to licensor or licensee relationship between the parties is quite irrelevant. The Civil Court, till date, has not even framed such an issue. Merely because such an issue may have been mistakenly proposed by the respondents whilst submitting the draft issues, there is no question of permitting the petitioner to take any advantage of the same.

12] The second suit i.e. Regular Civil Suit No. 325 of 2012 instituted by the respondent against the petitioner, before the Small Causes Court seeks the following substantive reliefs :

- a) *The defendant be directed to handover the vacant and peaceful possession of the suit premises as described in para no. 1 of the plaint, to the plaintiff.*
- b) *The defendant be directed to pay an amount at double the rate toward license fees from 30/08/2010 until actual delivery of possession of the suit premises to the plaintiff.*
- c) *Defendant by an order of permanent injunction be restrained from creating 3rd party interest and part with possession of suit premises.*

13] The second suit proceeds on the basis that the petitioner was a licensee in respect of the suit premises and such licence has been duly terminated by the respondents. The issues which arise in such second suit are quite different and distinct from the issues which will arise in the first suit.

14] Section 10 of the CPC provides that no courts 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, where such suit is pending in same or in any other Court in India '*having jurisdiction to grant the relief claimed*'.

15] As noted earlier, in the facts of the present case, it cannot be said that the matter in issue in the second suit is also directly and substantially in issue in the first suit. Besides, as pointed out by Mr. Pal, the Small Causes Court, in which the second suit has been instituted, would obviously, lack jurisdiction to issue in decree of specific performance. The Division Bench of this Court in *Manilal Premji Gala* (supra) at paragraph 16 has in fact observed thus :

“16. It is not possible to accept the contention of the learned Counsel for the Appellant. We have already pointed out that, consistently and overwhelmingly, the Courts in this country have interpreted Section 10 and held that the Court entertaining the subsequent suit should have the jurisdiction to grant the relief claimed in the first suit in order to enable the stay of the second suit.....”

16] For the aforesaid two reasons, there is absolutely no reason to recall the impugned order made by the Ad-hoc District Judge – 2 Pune.

17] This is also not a case where exercise of any *suo moto* powers under section 24 of the CPC and order consolidation of the two suits. In fact, such order of consolidation would embarrass the proceedings in both the suits. Even if it is assumed that a decree of eviction is to be made in the second suit and that such a decree is made prior to the decision in the first suit, that by itself, will not

preclude or disable the civil courts, to decree the first suit and order specific performance, in case, a case is made out for grant of such relief. The decision in *Gurdeepsingh* (supra) turns on its own facts. In that case, the Courts, noted the possibility of conflicting findings of two different courts and upon such basis, ordered the consolidation. Since, no such circumstances exist in the present case, no case is made out for the exercise of *suo moto* powers under section 24 of the CPC.

18] For the aforesaid reasons, this petition is dismissed. There shall however be no order as to costs.

(M. S. SONAK, J.)

Chandka