

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6566 OF 2013

Smt. Shashikala A. Solankar	..	Petitioner.
v/s.		
Shri Tukaram S. Masal & Others	..	Respondents.

Ms. Manjiri Parasnis, for the Petitioner.
Mr. Rupesh Zade, for the Respondents.

CORAM: M.S.SANKLECHA, J.
DATE : 21st AUGUST, 2017.

P.C:-

This Petition under Article 227 of the Constitution of India, challenges the order dated 4th February, 2013 passed by the Joint Civil Judge, Junior Division, Baramati. By the impugned order, the Civil Suit No.160 of 2011 was stayed, pending disposal of the criminal proceedings before the Sessions Court.

2 On 1st October, 2013, a notice was issued to the Respondents. At that time, parties were put to notice that the Petition may itself be disposed of finally at the stage of admission.

3 The grievances of the Petitioner is that the Civil Suit could not have been stayed in view of pending criminal proceedings under Section 10 of the Code of Civil Procedure, 1908 (Code).

4 I find that the impugned order is bereft of any reasons. It

does not indicate the nature of the proceedings in the criminal case nor does it indicate whether it was filed prior to the Civil Suit which is stayed by the impugned order. In fact, before Section 10 of the Code can be pressed into service, the Court should be satisfied that the matter in issue in the Civil Court is also directly and substantially in issue in a previously instituted suit. There is no finding recorded in the impugned order of the nature of the criminal proceedings or that it raises substantially identical issues as arising in the Civil Suit. Further, the words used are previously instituted suit and not any previously instituted proceedings. Moreover, as observed by the Supreme Court in *National Institute of Mental Health and Neuro Sciences v/s. C. Parameshwara AIR 2005 SC 242*, the fundamental tests to attract Section 10 of the Code is whether a final decision being reached in the previous suit, would operate as res judicata in a subsequent suit.

5 As observed by the Supreme Court in the context of Section 10 read with Section 151 of the Code in *Guru Granth Saheb Meerghat Varivas v/s. Ved Prakash 2013 (7) SCC 622*, that there is no hard and fast rule as to which of the two (civil or criminal) proceedings must be stayed. It further observed that the possibility of conflicting decisions in civil and criminal proceedings is not a relevant consideration for stay of the civil proceedings, as the decision of one Court is not binding on the other, except from damages or sentencing. Therefore, an order of stay would depend on the facts of each case. In this case, no discussion is found in the impugned order which would justify the stay of the civil suit.

6 In this case, the stay of the pending suit has been granted not on the basis of previously instituted suit but only as a criminal case is

pending before the Sessions Court. This without considering the relevance of the decision to be rendered in criminal proceedings to the civil proceedings.

7 Therefore, in exercise of my supervisory jurisdiction under Article 227 of the Constitution of India, the impugned order is quashed and set aside.

8 **Petition allowed.** No order as to costs.

(M.S.SANKLECHA,J.)