

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP Nos.2219,2412, 2253, 2245, 2402, & 2161 of 2017

COMMON ORDER ::

These civil revision petitions raise interesting question of law. The point that would arise for consideration is whether an interim order directing stay of all further proceedings passed by the appellate Court in appeal or by the revisional Court in revision, operates as stay in considering the interlocutory application filed in the trial Court or bars only from proceeding with the trial of the suit.

2. The petitioners in these revision petitions are plaintiffs in suit OS No.108 of 2014 (old OS No.49 of 2003). The petitioners filed IA Nos.56, 57, 58, 59, 60 & 61 of 2017, respectively, in suit OS No.108 of 2014, under Order 13, Rule 9, r/w. Section 151 CPC seeking return of original registered sale deeds filed by them to avail bank loans. The trial Court by the impugned orders, dismissed the interlocutory applications on the ground that this Court in CRP No.359 of 2008, dated 08-02-2008 allowed IA No.45 of

2006 filed by the petitioners herein, in the instant suit OS No.49 of 2003, granted stay of all further proceedings of the suit, till disposal of the appeal being AS No.62 of 2004.

Hence these civil revision petitions.

3. Sri E.V.V.S Ravi Kumar, learned counsel for the petitioners strenuously contended that the order of stay of suit passed in an application filed under Section 10 of CPC operates only in respect of further trial of the suit and there is no bar to consider the interlocutory applications to meet the ends of justice. In support of his contention, learned counsel placed reliance on a decision rendered by Kerala High Court in **V.R. BALAKRISHNAN NADAR vs. R.VELAYUDHAN NADAR**¹. Though notice is served, none appeared for the respondents.

4. The trial Court dismissed the interlocutory applications purportedly on the ground that passing any orders thereon would amount to conducting proceedings of the suit, which is stayed by this Court in CRP No.359 of 2008. This Court granted stay in the said revision petition at the instance of

¹ AIR 1980 KERALA 161

the petitioners herein in the present suit OS No.108 of 2014 (Old OS No.49 of 2003) having persuaded by the fact that suit OS No.26 of 1997, which was filed for declaration of title and injunction, the suit property therein and the suit property in the present suit being same, observed that the present suit OS No.108 of 2014 (Old OS No.49 of 2003) will have to await the decision in appeal AS No.62 of 2004 pending on the file of this Court, which was filed against the judgment and decree in suit OS No.26 of 1997.

5. It is trite to reproduce Section 10 CPC, which reads as under:-

"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."

6. From a plain reading of the above provision, it is understood that Section 10 requires that a suit must be

stayed if the matter directly and substantially in issue in it is also directly and substantially in issue in a previous suit that is pending. The criterion for deciding whether the subsequent suit be stayed or not is whether there is identity of the matters directly and substantially in issue in the two suits, if there is, the subsequent suit must be stayed and if there is not, it will not be stayed. The object of this provision is to prevent two Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. It is to obviate conflict of decisions of two contradictory decrees being passed in respect of the same subject-matter between the same parties. The words of Section 10 are mandatory and the test to determine whether the matter in issue in the second suit is also directly and substantially in issue in the previously instituted suit and whether if the first suit is determined the matters raised in the second suit and hit by *res-judicata* by reason of the decision in the prior suit. As a matter of course, it is not necessary that the subject-matter and cause of action should be the same. But what is essential is that

there must be substantial identity between the matters in dispute and parties in the earlier and later suits.

7. In this case the petitioners are seeking return of the original registered sale deeds filed by them from the custody of the Court to avail bank loans. The relief sought is incidental relief and has no relation to conduct of trial of the suit. What Section 10 CPC projects is only stay of trial of suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. The provision does not prevent or bars the Court from passing incidental orders required to meet the ends of justice. In other words, any incidental orders, not affecting the trial of the suit nor decides the rights of the parties conclusively can be passed. The Kerala High Court in **V.R. Balakrishnan Nadar's case (1 supra)**, relying on a Division Bench decision of the Bombay High Court in *Senaji Kapurchand vs. Pannaji Devichand's case* (AIR 1922 Bombay 276) upheld the order of the trial Court in allowing

the petitions to amend the plaint and for appointment of a Receiver, *dehors* stay of the suit under Section 10 CPC.

8. The Supreme Court in **INDIAN BANK vs. MAHARASTHRA STATE CO-OPERATIVE MARKETING FEDERATION LTD²**, while considering the scope and limits of Section 10 CPC held as under:-

“Section 10 of the Code prohibits the court from proceeding with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit provided other conditions mentioned in the section are also satisfied. The word 'trial' is no doubt of a very wide import as pointed out by the High Court. In legal parlance it means a judicial examination and determination of the issue in civil or criminal court by a competent Tribunal. According to Webster Comprehensive Dictionary, International Edition, it means the examination, before a tribunal having assigned jurisdiction, of the facts or law involved in an issue in order to determine that issue. According to Stroud's Judicial Dictionary (5th Edition), a 'trial' is the conclusion, by a competent tribunal, of question in issue in legal proceedings, whether civil or criminal. Thus in its widest sense it would include all the proceedings right from the stage of institution of a plaint in a civil case to the stage of final determination by a judgment and decree of the Court. Whether the widest meaning should be given to the word 'trial' or that it should be construed narrowly must necessarily depend upon the nature and object of the provision and the context in which it used.

² (1998) 5 SCC 69

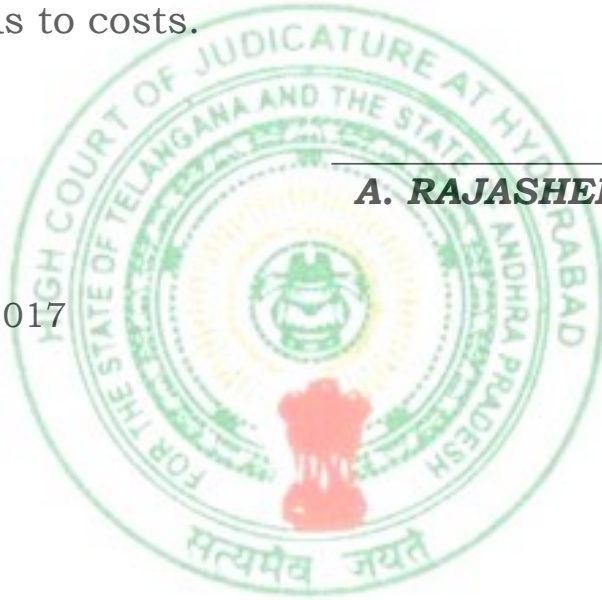
Therefore, the word 'trial' in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to 'proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit'. The object of the prohibition contained in Section 10 is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the Court to entertain and deal with the later suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. It has been construed by the Courts as not a bar to the passing of interlocutory orders such as an order for consolidation of the later suit with earlier suit, or appointment of a Receiver or an injunction or attachment before judgment. The course of action which the Court has to follow according to Section 10 is not to proceed with the 'trial' of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word 'trial' in Section 10 is not used in its widest sense." (emphasis supplied)

9. Inasmuch as allowing interlocutory applications would not in any way affect the rights of the parties, muchless determines the rights of the parties or it affects the trial of the suit nor amounts conducting trial, this Court is of the view that the trial Court has not properly exercised its jurisdiction vested in it in deciding the petitions.

10. In the circumstances, civil revision petitions are allowed and the impugned orders are set aside. The petitioners are permitted to take the original registered sale deeds filed into Court by them by substituting with the certified copies with an undertaking to produce the same as when required by the Court. Miscellaneous petitions, if any pending in these cases shall stand disposed of. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

Dated: 14-07-2017
NRG



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP Nos.2219,2412, 2253, 2245, 2402, & 2161 of 2017

//WEB//

NRG



Dated: 14-07-2017