

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.5898 of 2016

Date of decision: 10.08.2017

The Agricultural Produce Market Committee and others

..Petitioners

Versus

Osaw Agro Industries Pvt. Ltd.

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Avnish Mittal, Advocate
for the petitioners.

Ms. Munisha Gandhi, Sr. Advocate with
Ms. Salina Chalana, Advocate
for the respondent.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 18.07.2016 (Annexure P-5) passed by the trial Court, whereby, the application moved by the petitioners under Section 10 CPC for stay of suit has been dismissed.

Briefly, the facts of the case as made out in the present revision petition are that the respondent-plaintiff filed a suit for recovery of ₹39,84,044/-. During pendency of the civil suit, the petitioners-defendants filed an application under Section 10 CPC for staying the suit on the ground that the petitioners-defendants had previously filed a suit against the respondent-plaintiff at Ahmedabad and the present suit was liable to be stayed in terms of provisions of Section 10 CPC. Said application filed by

the petitioners was contested by the respondent-plaintiff on the ground that both the suits were totally different and the application was liable to be dismissed. The trial Court vide order dated 18.07.2016, dismissed the application, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioners submits that the trial Court has not appreciated the submissions made in the application that the suit was arising out of the same cause of action i.e., breach of the agreement and the subsequent suit was only the counter blast of the earlier suit filed at Civil Court, Ahmedabad. Learned counsel further submits that both the civil suits are between the same parties and on the same cause of action i.e., breach of agreement and as such, the controversy is the same. The matter directly or substantially involved in both the suits is the same. Learned counsel also submits that as per provisions of Section 10 CPC in case, the controversy involved is directly and substantially the same between the same parties, the Court is to stay the subsequently instituted suit. The provisions of Section 10 CPC have been ignored while passing the impugned order. Learned counsel for the petitioners has also relied upon judgment rendered by Hon'ble the Apex Court in ***Dr. Aloys Wobben and another vs. Yogesh Mehra and others, 2014(15) SCC 360***; judgments rendered by this Court in ***M/s O.P. Steel Traders vs. M/s Steel Strips Ltd., 1992(2) PLR 124, M/s Jagan Nath Jagdish Lal vs. M/s Piara Mal Gobind Ram Sachdev, 1979 PLJ 231, Sarvesh wife of Barkha Ram and Ors. vs. Krishna Devi and Anr., 2013(4) PLR 293*** and judgment rendered by the Allahabad High Court in ***Ramrichpal Singh vs. Dayanand Sarup minor***

through Bhagwat Sarup, 1955 AIR (Allahabad) 309 in support of his contentions.

Learned counsel for the respondent submits that both the suits are based on different cause of action as the present suit was filed by the respondent-plaintiff in pursuance of agreement dated 27.07.2007 for payment of amount of ₹39,84,044/- whereas the suit filed by the petitioners-defendants in the Court at Ahmedabad is pertaining to the plant installed by the respondent-plaintiff, which was not in a working and satisfactory condition as agreed in the agreement. A categoric finding has been given in the impugned order that two separate cause of action have arisen out of same transaction and accordingly, the application moved by the petitioners-defendants under Section 10 CPC has rightly been dismissed. Learned counsel for the respondent has also relied upon judgment rendered by Hon'ble the Apex Court in *Aspi Jal and another vs. Khushroo Rustom Dadyburjor, AIR 2013 SC 1712* in support of his contentions.

Heard arguments of learned counsel for the parties and have also perused the impugned order as well as other documents available on the file.

Facts relating to filing of civil suit by the respondent-plaintiff on the basis of agreement dated 27.07.2007; breach of that agreement and filing of application under Section 10 CPC for staying the proceedings before the trial Court in the subsequent suit are not disputed.

The application moved by the petitioners-defendants under Section 10 CPC for stay of the suit has been dismissed on the ground that transaction is same but the cause of action is different.

Section 10 CPC is relevant for resolving the issue in dispute in the present case, which is 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.

In view of the aforesaid provisions, for attracting the provisions of Section 10 CPC, it is necessary that the matter in issue should be directly and substantially the same in two different suits and the latest suit is to be stayed. The explanation with Section 10 CPC is also necessary, which is as under: -

“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.”

From plain reading of the aforesaid provision, it is evident that when a suit is instituted in a Court to which provisions of the Code apply, the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties

should not proceed. As per provisions of Section 10 of the Code, it is further required that the Court where the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10, i.e. “no court shall proceed with the trial of any suit” makes the provision mandatory and the Court where the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding. The view has been supported by the decision of Hon'ble the Apex Court in ***National Institute of Mental Health & Neuro Sciences vrs. C.Parameshwara, (2005) 2 SCC 256*** wherein it has been held as under:

“8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10

suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “directly and substantially in issue” are used in contradistinction to the words “incidentally or collaterally in issue”. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical.”

In the present case, undisputedly, the parties in both the suits are the same and the claim is also based on the same agreement entered by the parties. Now the question for consideration by this Court is as to whether the matter in issue is also directly and substantially in issue in

previously instituted suit.

As per provisions of Section 10 CPC, in case, the matter in issue directly and substantially in issue in the previously instituted suit are the same, the base for applicability of Section 10 CPC is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. In different words, it can be said as to whether the plaintiff can get the same relief in the subsequent suit in case, the earlier suit has been dismissed? The answer is in affirmative. It is also relevant to mention that when the matter in controversy is the same, it is material as to what further relief is claimed in the subsequent suit. In the application moved under Section 10 CPC, it is to be seen that the matter in issue in both the suits is exactly the same.

In the present case, the parties are same and claim is based on the agreement dated 27.07.2007. The suit filed by the petitioners-defendants on 29.03.2011 at Ahmedabad is prior to the suit filed on 11.04.2011 at Ambala by the respondent-plaintiff. Both the suits are based on same agreement. The subsequent suit has been filed by the respondent-plaintiff alleging that in pursuance of agreement dated 27.07.2007, payment to the tune of ₹39,84,044/- is due on the part of the petitioners-defendants. However, suit filed by the petitioners-defendants at Ahmedabad is pertaining to the fact that the plant installed by the respondent-plaintiff is not working satisfactory and not giving desired result as agreed. The petitioners-defendants informed the respondent-plaintiff regarding this fact vide letter dated 12.12.2009 but no proper steps were taken by the respondent-plaintiff.

It is also relevant to mention here that out of two suits, one suit was filed at Ahmedabad and thereafter, another suit was filed at Ambala. Both the suits were based on same agreement and issue was relating to breach of agreement between the same parties. Both the parties are asserting their rights on the basis of same agreement. On perusal of agreement dated 27.07.2007, it is apparent that it was executed between the parties at Ahmedabad (State of Gujarat) and jurisdiction of the Civil Court was at Ahmedabad being territorial. Subsequently, the suit filed at Ambala, which should have been barred as per provisions laid down in the Code of Civil Procedure.

A conjoint reading of both the civil suits and also after going through the relief sought and the averments, it is apparent that both the parties have asserted their respective claim because of breach of work contract, which shows that the controversy involved in both the suits is not only between the same set of parties but the matter is directly and substantially the same and as such, the subsequent suit filed on 11.04.2011 was not maintainable as per provisions of Section 10 CPC.

Accordingly, by considering provisions of Section 10 CPC and also the nature of suits filed at different two places, the proceedings in subsequent suit are required to be stayed. A specific stand was taken by mentioning in the suit that the respondent was not aware about the pendency of any suit or decided between the same parties. Para No.16 of the said suit is reproduced as under: -

“16. That no suit between the same parties on the same grounds have been previously instituted and finally decided by any Court.”

The suit at Ahmedabad was filed prior to the suit filed at Ambala. It cannot be said that the fact of filing of earlier suit was not in the knowledge of the respondent as there were number of communications exchanged between the parties including sending of legal notice and other letters. The subsequent suit at Ambala is based on agreement arrived at between the same parties. While passing the impugned order, all these factors have not been taken into consideration. The subsequent suit filed at Ambala was barred as per provisions of Section 10 CPC.

Accordingly, keeping in view the facts and law position as discussed above, the present writ petition is allowed and impugned order dated 18.07.2016 (Annexure P-5) is set-aside and the proceedings before the Civil Court at Ambala shall remain stayed.

10.08.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes