

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 1st June, 2018**

+ **CM(M) 734/2017 & CM No.25163/2017 (for stay)**

NARESH HANDA

..... Petitioner

Through: Mr. L. K. Singh and Ms. Saira
Parveen, Advs.

Versus

SUNIL KOCHHAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1 This petition under Article 227 of the Constitution of India impugns the order [dated 2nd May, 2017 in CS No.602/2015 of the Court of Additional District Judge-02 (Central), Tis Hazari Courts, Delhi] deciding the following issue:-

*“Whether the suit is liable to be stayed under Section 10 CPC in view of Civil Suit No.92/15 titled **“Sunir Kochhar Vs. Ravinder Handa & Ors.”** and CS No.82/15 title **Ravinder Handa Vs. Union of India & Ors.**” filed earlier to present suit?” (OPD).*

ordered to be treated as a preliminary issue, in a suit filed by respondent against petitioner, and holding that though there was no ground to stay the trial but the final decision in the suit will await the outcome of the previously instituted suits.

2. The petition came up before this Court first on 19th July, 2017, when attention of the counsel for the petitioner/defendant was drawn to the definition of ‘decree’ in Section 2(2) of the Code of Civil Procedure, 1908 (CPC) and which *inter alia* provides that even adjudication of some of the matters in controversy is a decree and it was enquired from the counsel for the petitioner/defendant, whether not the remedy of the petitioner/defendant against an order on a preliminary issue would be of an appeal and not a petition under Article 227.

3. On request of the counsel for the petitioner/defendant, the hearing was adjourned to 20th July, 2017. On 20th July, 2017, the counsel for the petitioner/defendant stated that he will file written submissions and the file was sent to the Chamber awaiting the same and for orders to be passed in the Chamber. The counsel for the petitioner/defendant, on 24th July, 2017, handed over written submissions. However, the file went on a back burner and the passing of the order remained and since considerable time has lapsed, the Court Master has telephonically informed the counsel for the petitioner/defendant of the passing of this order in today’s date.

4. The counsel for the petitioner/defendant, in his written submissions, (i) relying on *Narayana Kurup Vs. Rama Panicker* AIR 1953 Tra-Co 367 has contended that the decision on the question, whether trial in the suit should be stayed or not, does not amount to a decision on a matter in controversy in the suit; (ii) relying on *Chhelaram Vs. Manak* AIR 1997 Raj 284 and *Dattatraya Purshottam Parnekar Vs. Radhabai Balkrishna Trimbak* AIR 1921 Bom 220 has contended that the words “determination of the rights of the parties” in Section 2(2) of the CPC refers to substantive rights of the parties with regard to merits of the case and not to other disputes between the parties which are ancillary to the subject matter of the suit; (iii) has contended that Section 10 of the CPC does not preclude or prevent a party from filing a suit and what is curtailed is the proceedings in the suit, if the rights in controversy are also subject matter of a previously instituted suit.

5. I have since, in *Lalit Yadav Vs. Delhi Development Authority* MANU/DE/7871/2017, relying primarily on *Rishabh Chand Jain Vs. Ginesh Chandra Jain* (2016) 6 SCC 675, held a decision on a preliminary issue dismissing the suit to be a decree and have today in

CM(M) No.743/2017 titled *Pratap Singh Vs. Ramjas Foundation* held a decision on a preliminary issue, even if holding the suit to be maintainable, is appealable and hence the remedy under Article 227 of the Constitution of India is not available thereagainst.

6. What remains to be considered is, whether a decision on a preliminary issue qua Section 10 of the CPC is any different.

7. To appreciate the same, a summary of the facts may be given.

8. The respondent/plaintiff instituted the suit from which this petition arises, for recovery of possession of immoveable property with *mesne* profits, on the basis of title to the property and pleading that though the respondent/plaintiff was not aware of the capacity in which the petitioner/defendant was in occupation of the property but the petitioner/defendant in a previous suit filed by the respondent/plaintiff against the petitioner/defendant qua unauthorised construction being carried out by the petitioner/defendant had claimed himself to be a tenant in the premises under another person.

9. The petitioner/defendant contested the suit *inter alia* pleading (a) that the suit was liable to be stayed under Section 10 of the CPC because of the pendency of an earlier suit filed by the

respondent/plaintiff, of declaration that the Will dated 5th March, 2014 of late Ms. Padma as null and void; (b) that under the said Will of Ms. Padma, the suit property had been bequeathed to one Ravinder Handa and the petitioner/defendant, who was a tenant under Ms. Padma, had since attorned to Ravinder Handa as landlord and the said Ravinder Handa had also instituted a suit for recovery of possession against the petitioner/defendant and in which suit the respondent/plaintiff had also been impleaded as a defendant.

10. The learned Additional District Judge, in the impugned order has reasoned and held (i) that in the suit for declaration filed by respondent/plaintiff qua the Will of Ms. Padma, only Ravinder Handa is the defendant and the petitioner/defendant is not a party to the suit property; (ii) that in another suit filed by Ravinder Handa, of declaration of the documents in favour of the respondent/plaintiff as not binding on him, the petitioner/defendant was not a party; (iii) that the issue as to whether the suit property is owned by the respondent/plaintiff or Ravinder Handa as successor of Ms. Padma, was already subject matter of the said two suits and the decision in the said suits would have a direct and material bearing on the outcome of

the subject suit; (iv) that the said two suits have already been clubbed for the purposes of trial; (v) that it was in the fitness of the things that the subject suit should proceed for trial but the final decision be kept on hold till the time of decision in the suits between the respondent/plaintiff and Ravinder Handa.

11. The petitioner/defendant is aggrieved from refusal to stay proceedings in the suit.

12. Merit is found in the contention of the counsel for the petitioner/defendant, that the order aforesaid does not constitute a decree, inasmuch as it does not conclusively determine the rights of the parties with regard to all or any of the matters in controversy in the suit. I also find a Division Bench of the High Court of Punjab and Haryana to have in ***P.C. Jairath Vs. Amrit Jairath*** AIR 1967 P&H 148 held that no appeal lies from an order passed under Section 10 of the CPC and it has been held by a Division Bench of Himachal Pradesh High Court in ***Ram Dass Vs. Subhash Bakshi*** AIR 1977 HP 18 that an order under Section 10 of the CPC is revisable under Section 115 of the CPC. In fact, this Court in ***Anant Verinder Singh Vs. State (Govt. of NCT of Delhi)*** (2003) 107 DLT 291 has held that a

petition under Article 227 of the Constitution of India against an order staying proceedings under Section 10 CPC is not maintainable because remedy of a Revision Petition under Section 115 CPC is available.

13. However, **Anant Verinder Singh** supra though, pronounced on 18th September, 2003, did not consider amendment with effect from 1st July, 2002 to the CPC, adding a proviso to Section 115(1), providing that the High Court shall not thereunder vary or reverse any order made in the course of suit except where the order, if had been made in favour of party applying for revision, would have finally disposed of the suit. The order, even if in favour of petitioner / defendant, would have merely stayed proceedings in the suit and not disposed of the suit. Reference if any required, can be made to **Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers** (2003) 6 SCC 659. This Court, in **Pratap Narain Mathur Vs. MCD** 2014 SCC OnLine Del 403 has held a Revision Petition under Section 115 CPC to be not maintainable against an order on an application under Section 10 CPC.

14. Resultantly, the petitioner / defendant is entitled to invoke Article 227 of the Constitution of India.

15. However, otherwise on merits, I am unable to find any error in the order of the learned Additional District Judge. The question involved in the suit from which this petition arises is of the entitlement of the petitioner/defendant to continue in occupation of the premises. It is not in dispute that the petitioner/defendant is a tenant in the premises and whether it is the respondent/plaintiff, who is the owner/landlord or it is the aforesaid Ravinder Handa, who is the owner/landlord. The petitioner/defendant, if not entitled to continue in the premises and if liable for any *mesne* profits, a decree therefor is required to be passed, leaving it open to the respondent/plaintiff and the aforesaid Ravinder Handa to in their inter se proceedings, have adjudicated, which one of them is entitled to possession and *mesne* profits. It is found, that the petitioner/defendant taking advantage of the inter se fight between the respondent/plaintiff and the aforesaid Ravinder Handa, is benefiting by continuing in possession of the premises and to which the Court cannot be a privy.

16. In fact it is inexplicable, as to why the respondent/plaintiff and/or the aforesaid Ravinder Handa have in their inter se suits not obtained an order for appointment of a Receiver to take steps for

ejectment of the petitioner/defendant of optimum utilization of property subject to the outcome of their *inter se* suits.

17. Supreme Court, in *Aspi Jal Vs. Khushroo Rustom Dadyburjor* (2013) 4 SCC 333 held that for Section 10 CPC to apply, the entire subject matter of two suits must be same. Here, the subject matter of ejectment of petitioner / defendant is not subject matter of *inter se* title disputes between respondent / plaintiff and Ravinder Handa.

18. The petition is thus dismissed.

No costs.

JUNE 01, 2018
'bs'

RAJIV SAHAI ENDLAW, J.