

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 918 of 2017**

South Eastern Coalfield Ltd. Through its General Manager, SECL,
Bishrampur Area, P.S. Bishrampur, Tahsil and District Surajpur
(C.G.) **---- Petitioner**

Versus

Vikas Kumar Singh, S/o Late Kameshwar Singh, aged about 28
years, R/o Quarter No. 116, Mines Colony, Bishrampur, P.S.
Bishrampur, Tahsil and District Surajpur (C.G.) **--- Respondent**

For Petitioner	:	Mr. Vinod Deshmukh, Advocate.
For Respondent	:	None.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board**04/12/18**

1. Taking exception to the impugned order passed by the trial Court under Section 10 of the Code of Civil Procedure, 1908 staying the subsequent Civil Suit No. 21A/2016 (Mahaprabhandak, SECL vs. Vikas Kumar Singh) holding that the matter in issue is directly and substantially the same issue in a previously instituted suit between the same parties which has been questioned by the petitioner in this writ petition.

2. Mr. Vinod Deshmukh, learned counsel appearing for the petitioner submits that the trial Court is absolutely unjustified in invoking Section 10 of CPC as the matter in issue in present suit is not directly and substantially the issue in previously instituted suit though the suit is

between the same parties, therefore, the trial Court is absolutely unjustified in granting the application under Section 10 of the CPC.

3. I have heard learned counsel for the petitioner, considered his submissions made hereinabove and perused the record.

4. Section 10 of CPC provides 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].”

5. The object underlying Section 10 of CPC is to avoid two parallel trials on the same issue by two Courts of concurrent jurisdiction and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. (See *National Institute of Mental Health & Neuro Sciences v. C. Parameshwara*¹).

6. The use of negative expression in Section 10 of CPC - “No Court shall proceed with the trial of any suit” makes the provision mandatory and the court in which the subsequent suit is filed is prohibited from proceeding with the trial of that suit if the conditions laid down in

1 AIR 2005 SC 242

Section 10 of the Code are satisfied. (See *Aspi Jal v. Khushboo Rustom Dadyburjor*²).

7. Reverting to the facts of the present case, in the light of the principles of law laid down by the Supreme court in the aforesaid cases, it is quite vivid that the plaintiff/SECL firstly filed a Civil Suit No. 14-A/16 against the defendant Vikas Kumar Singh disclosing the cause of action that on 02.02.2016, the defendant along with his friends entered into Inter-Region Cricket Competition organized by SECL at Bishrampur and interfered with the said programme and, therefore, the cause of action arisen - to claim the damages for defamation. The SECL filed another Civil Suit No. 21A/2016 against the defendant again stating in paragraph-26 that on 02.02.2016, the defendant entered into the premises where the Inter-Region Cricket Competition was going on and interfered with the said competition and thereafter, he lodged a false report at Police Station Bishrampur and, therefore, the cause of action arisen.

8. A careful perusal of the complaints would show that in the two Civil Suits, the parties are same and the issue involved and the cause of action shown are also the same except additional cause of action shown in subsequent suit as such, it can safely be said that the issue in the previously instituted suit is directly and substantially the issue in the subsequently instituted suit, as such the condition precedent for the power of jurisdiction under Section 10 of CPC is squarely attracted and

² (2013) 4 SCC 333

therefore, the trial Court is absolutely justified in exercising the power conferred under Section 10 of CPC and final decision in the previously instituted suit was operative as *resjudicata* in subsequent suit. As such, the finding recorded by the trial Court and consequently the order passed exercising power under Section 10 of CPC in the suit is absolutely justified. As such, I do not find any merit in the writ petition.

9. Accordingly, the writ petition deserves to be and is hereby dismissed with no order as to cost(s). However, the petitioner would be at liberty to move an application before the trial Court to expedite the trial.

10. A copy of this order be sent to the trial Court directly as well as through the concerned District Judge by email and Fax for information and compliance.

SD/-
(Sanjay K. Agrawal)
Judge