

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8397 OF 2017

Jayprakash Sitaram Goel	]	
Age : Adult, Occ. Business	]	
R/at : Gangotri, Salisbury Park,	]	
Pune - 411 001	]	<u>Petitioner</u>

Versus

1	Smt.Sarubai Narayan Mulik	]	
	(Since deceased)	]	
2	Smt.Mathurabai Arjun Magar	]	
	Age : 52 years, Occ. Housewife	]	
	R/at Magarpatta, Hadapsar,	]	
	Pune - 411 028	]	
3	Murlidhar Nivrutti Deokar	]	
	Age : 56 years, Occ.Agriculturist,	]	
	R/at Ramwadi, Vadgaonsheri,	]	
	Pune-Nagar Road, Pune - 411 014	]	
3A	Mrs.Sindhu Murlidhar Devkar (Widow)	]	
	Age : Adult, Occ. Housewife	]	
3B	Maruti Murlidhar Devkar (Son)	]	
	Age : Adult, Occ.Agriculture,	]	
	Both R/at Geenland, Lunkad Park,	]	
	Viman Nagar, Pune	]	
3C	Chandrabhas Murlidhar Devkar (Son)	]	
	Age : Adult, Occ.Agriculture	]	
3D	Mrs.Ranjana Chandrakant Sorte	]	
	(Daughter)	]	
	Since deceased through legal heirs	]	
3D1	Pramod Chandrakant Sorte	]	
	Age : Adult, Occ.Agriculture	]	
3D2	Miss.Chaitali Chandrakant Sorte	]	
	Age : Adult, Occ.Education	]	
3D3	Miss.Pornima Chandrakant Sorte	]	

	Age : Adult, Occ.Education,	]
	All R/at Post Sangamwadi,	]
	Tal. Haveli, Dist. Pune	]
		]
3E	Mrs.Savitri Dnyaneshwar Khandave	]
	(Daughter)	]
	Age : Adult, Occ.Housewife,	]
	R/at A/p.Nirguji Road, Lohgaon,	]
	Dist.Pune	]
3F	Mrs.Meera Wadekar	]
	Age : Adult, Occ.Housewife,	]
	R/at Srushti Apartment, 15 Number	]
	Hadapsar, Tal. Haveli, Dist.Pune	]
3G	Mrs.Sonali Vijay Harphale (daughter)	]
	Age : Adult, Occ.Housewife,	]
	R/at At post Fursingi,	]
	Tal. Haveli, Dist. Pune	]
4	Satish Gajanan Mulik	]
	Age : 49 yrs., Occ.Legal Practitioner,	]
	R/at Survey No.8, Wadgaon Sheri,	]
	Pune - 411 014	]
		<u>Respondents</u>

**WITH
WRIT PETITION NO. 8398 OF 2017**

Subhash Sitaram Goel,	]
Age : Adult, Occ. Business	]
R/at : 125, Nana Peth,	]
Pune - 411 002	]
	<u>Petitioner</u>

Versus

1	Smt.Sarubai Narayan Mulik	]
	(Since deceased)	]
2	Smt.Mathurabai Arjun Magar	]
	Age : 52 years, Occ. Housewife	]
	R/at Magarpatta, Hadapsar,	]
	Pune - 411 028	]
3	Murlidhar Nivrutti Deokar	]

- Age : 56 years, Occ.Agriculturist,]
R/at Ramwadi, Vadgaonsheri,]
Pune-Nagar Road, Pune - 411 014]
- 3A Mrs.Sindhu Murlidhar Devkar (Widow)]
Age : Adult, Occ. Housewife]
- 3B Maruti Murlidhar Devkar (Son)]
Age : Adult, Occ.Agriculture,]
Both R/at Geenland, Lunkad Park,]
Viman Nagar, Pune]
- 3C Chandrahas Murlidhar Devkar (Son)]
Age : Adult, Occ.Agriculture]
- 3D Mrs.Ranjana Chandrakant Sorte]
(Daughter)]
Since deceased through legal heirs]
- 3D1 Pramod Chandrakant Sorte]
Age : Adult, Occ.Agriculture]
- 3D2 Miss.Chaitali Chandrakant Sorte]
Age : Adult, Occ.Education]
- 3D3 Miss.Pornima Chandrakant Sorte]
Age : Adult, Occ.Education,]
All R/at Post Sangamwadi,]
Tal. Haveli, Dist. Pune]
- 3E Mrs.Savitri Dnyaneshwar Khandave]
(Daughter)]
Age : Adult, Occ.Housewife,]
R/at A/p.Nirguji Road, Lohgaon,]
Dist.Pune]
- 3F Mrs.Meera Wadekar]
Age : Adult, Occ.Housewife,]
R/at Srushti Apartment, 15 Number]
Hadapsar, Tal. Haveli, Dist.Pune]
- 3G Mrs.Sonali Vijay Harphale (daughter)]
Age : Adult, Occ.Housewife,]
R/at At post Fursingi,]
Tal. Haveli, Dist. Pune]
- 4 Satish Gajanan Mulik]
Age : 49 yrs., Occ.Legal Practitioner,]
R/at Survey No.8, Wadgaon Sheri,]
Pune - 411 014]

Respondents

**WITH
WRIT PETITION NO. 8739 OF 2017**

Summer Palace Land Developers]
Private Limited,]
A company limited by shares]
incorporated under provisions of]
Companies Act, 1956 having its]
registered office at : A-5, Everest,]
Tardeo Everest Premises Co-operative]
Society, Tardeo, Mumbai - 400 034, By]
the hands of its Director/Authorized]
Signatory: Shri Ramesh Bhatia]

Petitioner

Versus

- | | | |
|-----|---|------------------|
| 1 | Smt.Sarubai Narayan Mulik
(Since deceased) |]
] |
| 2 | Smt.Mathurabai Arjun Magar
Age : 52 years, Occ. Housewife
R/at Magarpatta, Hadapsar,
Pune - 411 028 |]
]
]
] |
| 3 | Murlidhar Nivrutti Deokar
Age : 56 years, Occ.Agriculturist,
R/at Ramwadi, Vadgaonsheri,
Pune-Nagar Road, Pune - 411 014 |]
]
]
] |
| 3A | Mrs.Sindhu Murlidhar Devkar (Widow)
Age : Adult, Occ. Housewife |]
] |
| 3B | Maruti Murlidhar Devkar (Son)
Age : Adult, Occ.Agriculture,
Both R/at Geenland, Lunkad Park,
Viman Nagar, Pune |]
]
]
] |
| 3C | Chandrahass Murlidhar Devkar (Son)
Age : Adult, Occ.Agriculture |]
] |
| 3D | Mrs.Ranjana Chandrakant Sorte
(Daughter)
Since deceased through legal heirs |]
]
] |
| 3D1 | Pramod Chandrakant Sorte
Age : Adult, Occ.Agriculture |]
] |

3D2 Miss.Chaitali Chandrakant Sorte]
 Age : Adult, Occ.Education]

3D3 Miss.Pornima Chandrakant Sorte]
 Age : Adult, Occ.Education,]
 All R/at Post Sangamwadi,]
 Tal. Haveli, Dist. Pune]

3E Mrs.Savitri Dnyaneshwar Khandave]
 (Daughter)]
 Age : Adult, Occ.Housewife,]
 R/at A/p.Nirguji Road, Lohgaon,]
 Dist.Pune]

3F Mrs.Meera Wadekar]
 Age : Adult, Occ.Housewife,]
 R/at Srushti Apartment, 15 Number]
 Hadapsar, Tal. Haveli, Dist.Pune]

3G Mrs.Sonali Vijay Harphale (daughter)]
 Age : Adult, Occ.Housewife,]
 R/at At post Fursingi,]
 Tal. Haveli, Dist. Pune]

4 Satish Gajanan Mulik]
 Age : 49 yrs., Occ.Legal Practitioner,]
 R/at Survey No.8, Wadgaon Sheri,]
 Pune - 411 014]

Respondents

**WITH
 WRIT PETITION NO. 8740 OF 2017**

Poonam Aundh Land Developers]
 Private Limited,]
 A company limited by shares]
 incorporated under provisions of]
 Companies Act, 1956 having its]
 registered office at : A-5, Everest,]
 Tardeo Everest Premises Co-operative]
 Society, Tardeo, Mumbai - 400 034, By]
 the hands of its Director/Authorized]
 Signatory: Shri Ramesh Bhatia]

Petitioner**Versus**

- 1 Smt.Sarubai Narayan Mulik]
(Since deceased)]
- 2 Smt.Mathurabai Arjun Magar]
Age : 52 years, Occ. Housewife]
R/at Magarpatta, Hadapsar,]
Pune - 411 028]
- 3 Murlidhar Nivrutti Deokar]
Age : 56 years, Occ.Agriculturist,]
R/at Ramwadi, Vadgaonsheri,]
Pune-Nagar Road, Pune - 411 014]
- 3A Mrs.Sindhu Murlidhar Devkar (Widow)]
Age : Adult, Occ. Housewife]
- 3B Maruti Murlidhar Devkar (Son)]
Age : Adult, Occ.Agriculture,]
Both R/at Geenland, Lunkad Park,]
Viman Nagar, Pune]
- 3C Chandrahas Murlidhar Devkar (Son)]
Age : Adult, Occ.Agriculture]
- 3D Mrs.Ranjana Chandrakant Sorte]
(Daughter)]
Since deceased through legal heirs]
- 3D1 Pramod Chandrakant Sorte]
Age : Adult, Occ.Agriculture]
- 3D2 Miss.Chaitali Chandrakant Sorte]
Age : Adult, Occ.Education]
- 3D3 Miss.Pornima Chandrakant Sorte]
Age : Adult, Occ.Education,]
All R/at Post Sangamwadi,]
Tal. Haveli, Dist. Pune]
- 3E Mrs.Savitri Dnyaneshwar Khandave]
(Daughter)]
Age : Adult, Occ.Housewife,]
R/at A/p.Nirguji Road, Lohgaon,]
Dist.Pune]
- 3F Mrs.Meera Wadekar]
Age : Adult, Occ.Housewife,]
R/at Srushti Apartment, 15 Number]
Hadapsar, Tal. Haveli, Dist.Pune]

3G Mrs.Sonali Vijay Harphale (daughter)]
 Age : Adult, Occ.Housewife,]
 R/at At post Fursingi,]
 Tal. Haveli, Dist. Pune]

4 Satish Gajanan Mulik]
 Age : 49 yrs., Occ.Legal Practitioner,]
 R/at Survey No.8, Wadgaon Sheri,]
 Pune - 411 014]

Respondents

**WITH
WRIT PETITION NO. 8741 OF 2017**

Rohinton Jamshedji Mehta]
 Age : Adult, Occ.Business,]
 R/at : 212, San-Mahu Commercial]
 Complex, 5, Bund Garden Road,]
 Pune - 411 037]

Petitioner**Versus**

1 Smt.Sarubai Narayan Mulik]
 (Since deceased)]

2 Smt.Mathurabai Arjun Magar]
 Age : 52 years, Occ. Housewife]
 R/at Magarpatta, Hadapsar,]
 Pune - 411 028]

3 Murlidhar Nivrutti Deokar]
 Age : 56 years, Occ.Agriculturist,]
 R/at Ramwadi, Vadgaonsheri,]
 Pune-Nagar Road, Pune - 411 014]

3A Mrs.Sindhu Murlidhar Devkar (Widow)]
 Age : Adult, Occ. Housewife]

3B Maruti Murlidhar Devkar (Son)]
 Age : Adult, Occ.Agriculture,]
 Both R/at Geenland, Lunkad Park,]
 Viman Nagar, Pune]

3C Chandrahas Murlidhar Devkar (Son)]
 Age : Adult, Occ.Agriculture]

3D	Mrs.Ranjana Chandrakant Sorte (Daughter) Since deceased through legal heirs	]]]	
3D1	Pramod Chandrakant Sorte Age : Adult, Occ.Agriculture	]]	
3D2	Miss.Chaitali Chandrakant Sorte Age : Adult, Occ.Education	]]	
3D3	Miss.Pornima Chandrakant Sorte Age : Adult, Occ.Education, All R/at Post Sangamwadi, Tal. Haveli, Dist. Pune	]]]]	
3E	Mrs.Savitri Dnyaneshwar Khandave (Daughter) Age : Adult, Occ.Housewife, R/at A/p.Nirguji Road, Lohgaon, Dist.Pune	]]]]]	
3F	Mrs.Meera Wadekar Age : Adult, Occ.Housewife, R/at Srushti Apartment, 15 Number Hadapsar, Tal. Haveli, Dist.Pune	]]]]	
3G	Mrs.Sonali Vijay Harphale (daughter) Age : Adult, Occ.Housewife, R/at At post Fursingi, Tal. Haveli, Dist. Pune	]]]]	
4	Satish Gajanan Mulik Age : 49 yrs., Occ.Legal Practitioner, R/at Survey No.8, Wadgaon Sheri, Pune - 411 014	]]]]	<u>Respondents</u>

**WITH
WRIT PETITION NO. 8399 OF 2017**

Nitin Dwarkadas Nyati, Age : Adult, Occ. Business, R/at : 10/7, Anand Society, Off Shankarsheth Road, Pune - 411 037	]]]]]	<u>Petitioner</u>
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Versus

- 1 Smt.Sarubai Narayan Mulik]
(Since deceased)]
- 2 Smt.Mathurabai Arjun Magar]
Age : 52 years, Occ. Housewife]
R/at Magarpatta, Hadapsar,]
Pune - 411 028]
- 3 Murlidhar Nivrutti Deokar]
Age : 56 years, Occ.Agriculturist,]
R/at Ramwadi, Vadgaonsheri,]
Pune-Nagar Road, Pune - 411 014]
- 3A Mrs.Sindhu Murlidhar Devkar (Widow)]
Age : Adult, Occ. Housewife]
- 3B Maruti Murlidhar Devkar (Son)]
Age : Adult, Occ.Agriculture,]
Both R/at Geenland, Lunkad Park,]
Viman Nagar, Pune]
- 3C Chandrahas Murlidhar Devkar (Son)]
Age : Adult, Occ.Agriculture]
- 3D Mrs.Ranjana Chandrakant Sorte]
(Daughter)]
Since deceased through legal heirs]
- 3D1 Pramod Chandrakant Sorte]
Age : Adult, Occ.Agriculture]
- 3D2 Miss.Chaitali Chandrakant Sorte]
Age : Adult, Occ.Education]
- 3D3 Miss.Pornima Chandrakant Sorte]
Age : Adult, Occ.Education,]
All R/at Post Sangamwadi,]
Tal. Haveli, Dist. Pune]
- 3E Mrs.Savitri Dnyaneshwar Khandave]
(Daughter)]
Age : Adult, Occ.Housewife,]
R/at A/p.Nirguji Road, Lohgaon,]
Dist.Pune]
- 3F Mrs.Meera Wadekar]
Age : Adult, Occ.Housewife,]
R/at Srushti Apartment, 15 Number]
Hadapsar, Tal. Haveli, Dist.Pune]

3G Mrs.Sonali Vijay Harphale (daughter)]
 Age : Adult, Occ.Housewife,]
 R/at At post Fursingi,]
 Tal. Haveli, Dist. Pune]

4 Satish Gajanan Mulik]
 Age : 49 yrs., Occ.Legal Practitioner,]
 R/at Survey No.8, Wadgaon Sheri,]
 Pune - 411 014]

Respondents

- Mr.Vishwajit Sawant a/w. Mr.Purushottam G. Chavan for the Petitioners.
- Mr.S.M. Gorwadkar, Senior Counsel i/b. Mr.Niranjan A. Mogre for Respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th JANUARY, 2018.

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for both the parties.

2] By these Writ Petitions filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 29th April, 2017 passed by 8th Joint Civil Judge Senior Division, Pune, thereby rejecting the Petitioners' applications filed under Section 10 read with Section 151 of the Civil Procedure Code, for stay of their respective suits, filed against the Respondents for specific performance of contract.

3] It is submitted by learned counsel for the Petitioners that the present suits are filed by the Petitioners for specific performance of the agreement dated 26th December, 1994, executed by Respondent No.1 in favour of the Petitioners and for permanent injunction in respect of part and parcel of the land admeasuring 20,200 sq. meters bearing Survey No.16/2 situated at Village Vadgaonsheri, Taluka Haveli, District Pune. The Petitioners has paid more than 97% of the consideration amount and they are in possession of the suit property.

4] However, in the interregnum, one Mr.Kanhaiyalal Talera had also filed a Special Civil Suit No.1792 of 1994 against Respondent No.1 for specific performance of Visar Pavti, alleged to be executed by Respondent No.1 on 28th March, 1979 in his favour relating to the entire property bearing Survey No.1612, including the plots of the Petitioners. In that suit, the Petitioners had filed an application for their impleadment. However, the said application came to be dismissed.

5] The trial Court has also dismissed the said suit on 16th November, 2007. Mr.Talera has, thereafter, preferred First Appeal No.2860 of 2007 before this Court. This Court has allowed it on 29th October, 2013 and granted the decree of specific performance of contract in favour of Mr.Talera. Now, the said matter is pending before

the Hon'ble Supreme Court in the Special Leave Petition No.737 of 2014 filed by Respondent No.1 against the decree of specific performance passed by this Court.

6] Meanwhile, the Petitioners had also preferred the Special Leave Petition No. 1138 of 2014 in the Hon'ble Supreme Court challenging the said decree. Now, both the Special Leave Petitions are tagged together as per the order passed by the Hon'ble Supreme Court on 24th January, 2014 and pending for its consideration. In Special Leave Petition No.1138 of 2014, the application was also made by the Petitioners to the Hon'ble Supreme Court to stay the present suits till Special Leave Petitions are decided. The Hon'ble Supreme Court, however, by its order dated 10th February, 2017 observed that,

“Having heard learned counsel appearing for the parties and upon perusal of the record, we see no reasons to grant interim stay of the own suits of the applicants, particularly since the applicants have not yet been granted permission to file the special leave petitions. Accordingly, these interlocutory applications stand rejected.

However, the applicants may file applications for stay before the trial Court in respect of their own suits pending before it.

Needless to mention that in the event the applicants make such applications, the trial Court may decide the same in accordance with law”

7] Accordingly, the Petitioners had preferred these applications before the trial Court under Section 10 read with Section 151 of C.P.C., seeking stay to the hearing of their suits on the count that the decree passed in the earlier suit for specific performance, filed by Mr.Kanhaiyalal Talera against Respondent No.1, is going to have bearing on the decision of their suits and as that decree is under challenge before the Hon'ble Supreme Court, till the decision thereof, the trial Court should not proceed with the hearing of these suits.

8] It is urged by learned counsel for the Petitioners that in the written statement in paragraph No.(32A), the Defendant No.4 has also taken a specific contention that, during lifetime of Respondent No.1, Mr.Kanhaiyalal Talera had filed a false suit for specific performance of the agreement and the said suit came to be decreed in the appeal and therefore, as in respect of the same property already the decree for specific performance is passed, trial Court may not use the discretion in favour of the Petitioners and in that event, the Petitioners suits should be dismissed. It is urged that if the Petitioners who are the Plaintiffs themselves are seeking the stay to their own suits, the trial Court should have granted such stay, instead of proceeding with the hearing of the suits, thereby causing grave prejudice to the rights of the Petitioners.

9] According to learned counsel for the Petitioners, though the trial Court has discretion as to whether to grant the relief of specific performance of the agreement or in the alternate of refund of earnest amount, however, that discretion will be exercised by the trial Court in these suits, against the Petitioners, being influenced by the fact that in respect of the same property, the decree for specific performance of the contract is already passed in favour of Mr.Talera. Hence according to learned counsel for the Petitioners, from the point of propriety also, the trial Court should have stayed the hearing of the suits.

10] It is further submitted by learned counsel for the Petitioners that the trial Court has rejected the applications filed by the Petitioners only on the ground that the parties to the suit are not the same and suit transaction in the present suit and in the earlier suit filed by Mr.Talera is also not the same. However, it is urged that, admittedly, Respondent No.1 is a party to the present suit and also to the earlier suit. Not only that, even the Special Leave Petitions preferred by the Petitioners and Respondent No.1 against the earlier decree of specific performance, granted in favour of Mr.Talera, are also tagged together by the Hon'ble Supreme Court, thereby indicating that controversy involved in both the suits is one and same. Hence, in

principle, the parties and the transactions are the same. The trial Court should have therefore kept in mind the spirit and object of Section 10 of C.P.C. for the purpose of deciding the application. The trial Court has, however, rejected the stay application and it has now the result of as good as trial Court exercising its discretion in denying the decree of specific performance of the agreement in favour of the Petitioners. Therefore, according to learned counsel for the Petitioners, the impugned order passed by the trial Court needs to be quashed and set-aside as it is causing grave prejudice to the Petitioners and it is also against the object and purpose of Section 10 of C.P.C..

11] Per contra, learned counsel for the Respondents has supported the impugned order by submitting that, admittedly, the present suits are filed by the Petitioners, whereas earlier suit was filed by one Mr.Talera, therefore the parties to both the suits are definitely different. Secondly, the subject matter of the suit transactions, namely, the agreements of sale in both the suits are also different ones. Hence, the issues involved in both the suits are also different. Moreover, in the earlier suit the entire land of Survey No.16/2 was subject matter of the suit, whereas in the present suits only part thereof is involved. Therefore, the requisite conditions for invoking

Section 10 of C.P.C. are not at all attracted, far remained to be satisfied.

12] Further, it is submitted that the Petitioners are, by filing these applications, assuming that their suits are going to be decreed. It is submitted that, the decision of a suit for specific performance of the agreement depends on several factors, like, readiness and willingness of the Petitioners to perform their part of the contract; the question, whether the agreement executed is legal, valid and in subsistence etc. Therefore, the decision of the present suits is not only depending on the decree passed in the earlier suit filed by Mr.Talera but on several other factors, especially on the facts of the present suits. Hence, according to learned counsel for the Respondents, when the application filed by the Petitioners was not satisfying the conditions laid down in Section 10 of the C.P.C., the trial Court has rightly refused to stay the hearing of the suit.

13] Moreover, it is submitted that, now the hearing of the suits is at the concluding stage. The evidence of the Plaintiff and his witness is recorded; even the evidence of Defendant and his witness is also concluded. The matter is at the stage of argument. Hence, according to learned counsel for the Respondents, at this stage, there is no propriety also in staying the hearing of the suit.

14] Having heard learned counsel for both the parties, this Court is of the opinion that, as the controversy involved in these petitions revolves around the provisions of Section 10 of C.P.C., it would be necessary to reproduce the same for ready reference, as follows :

“Section 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].*

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.”*

15] Thus, for applicability of Section 10 of C.P.C., following conditions must be fulfilled:

- i) Parties to both the suits are same and are litigating under the same title.
- ii) The matter in both these suits is directly and substantially the same.
- iii) The previously instituted suit must be pending.

- iv) The Court, in which the previously instituted suit is pending has jurisdiction to grant the relief claimed in the subsequent suit.

16] As held by the Hon'ble Supreme Court, in the case of, *National Institute of Mental Health and Neuro Sciences Vs. C. Parmeshwara*, AIR 2005 SCC 242,

"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 contra-distinction 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 subject matter in both the proceedings is identical."

17] In the instant case, admittedly, the parties to both the suits are not the same. The Petitioners were not parties to the earlier suit which was filed by Mr.Talera against Respondent No.1. Though, the Petitioners has made an application for their impleadment in the said suit, that application came to be rejected. In the Special Leave Petition No.1138 of 2014 preferred by the Petitioners against the judgment in the earlier suit, no stay is granted to the hearing of the Petitioners suits, though a specific prayer which came to be rejected. Though, the Petitioner's Special Leave Petition No.1138 of 2014 is tagged with the Special Leave Petition No.737 of 2014 preferred by Respondent No.1, as observed by the Hon'ble Supreme Court, it is yet not admitted. Hence, the fact remains that the Petitioners were not party to the earlier suit.

18] Moreover, the issue which was directly and substantially for consideration in the earlier suit and in the present suit is also different. In the earlier suit for specific performance filed by

Mr.Talera, the issues framed for consideration were,

- “a) *Whether he was entitled to get specific performance of his agreement ?*
- b) *Whether he was ready and willing to perform his part of the contract ?*
- c) *Whether the contract agreement on which he was seeking the relief was legal, valid ?”*

19] As against it, in the present case, the Petitioners' readiness and willingness to perform their part of the contract and the legality and validity of their agreements of sale are the necessary issues for consideration before the trial Court. Hence, the issues for consideration in both the suits are also not directly and substantially the same.

20] Moreover, only if the Petitioners succeed in proving the legality and validity of their agreements for sale and further prove their readiness and willingness to perform their part of the contract and other requisite conditions, their suits may be decreed. The question as to which relief they will be entitled, whether of specific performance of their agreements or for refund of earnest amount, will then arise for consideration of the trial Court. Hence at this stage, it cannot be assumed that relief of specific performance of the contract will be refused to the Petitioners, merely because such relief is already

granted to Mr.Talera.

21] Moreover, the relief granted to Mr.Talera is in respect of entire land, whereas, the Petitioners are claiming that relief only in respect of part of that land. Therefore, at this stage, it cannot be said that conditions laid down in Section 10 of C.P.C. for staying of the suit are satisfied.

22] Even as regards the propriety also, though learned counsel for the Petitioners requests the Court to exercise its inherent powers under Section 151 of C.P.C., however, as held by the Hon'ble Supreme Court in the case of, *Manohar Lal Chopra V/s. Raj Bahadur Rao Raja Seth Hiralal*, reported in (AIR 1962 SC 527), "inherent jurisdiction of the Court to make orders *ex debito justitiae* is undoubtedly affirmed by Section 151, CPC, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code. Where the Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive."

23] In the case of *National Institute of Mental Health and Neuro Sciences V/s. C. Parameshwara (supra)*, the very same issue was raised for consideration before the Hon'ble Supreme Court relating to the application of Section 10 of C.P.C. and request was made

for invoking inherent powers under Section 151 of C.P.C., when it was found that Section 10 of C.P.C. has no application. As the High Court has granted such request, it was held by the Hon'ble Supreme Court that, *"if Section 10 of C.P.C. has no application, it was not open to the High Court to bye-pass Section 10 of C.P.C. by invoking Section 151 of C.P.C."*

24] It was further held that, *"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 contra-distinction to the words 'incidentally or collaterally in issue'. Therefore, Section 10 of C.P.C. would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical"*.

25] In the instant case, as discussed above, not only parties to both the suits are different but the subject matter of this suit and the earlier suit also cannot be called as identical. It also cannot be said that the issues raised in this suit were directly and substantially raised for consideration in the earlier suit. In such situation, one of the important and crucial conditions laid down in Section 10 of C.P.C. being not fulfilled, no fault can be found in the impugned order of the trial Court, when the trial Court has rightly rejected the Petitioners'

applications for staying their own suits.

26] Even otherwise also, the hearing of the present suits is mostly completed and as pointed out by the learned counsel for the Respondents, the Petitioners had already amended the plaint and sought the additional relief of damages, along with interest, to be paid to them.

27] Be that as it may, the fact remains that, ultimately even if the result of the proceedings in the Hon'ble Supreme Court goes in favour of the Petitioners, the decree passed by the trial Court will be subject to that result in the appeal. The appeal is again the continuation of the suit, as such, in the appeals also, the Petitioners can seek the decree for specific performance, if their suits are decreed and the decree for specific performance is refused by the trial Court, only on the ground that such decree is granted in the earlier suit filed by Mr.Talera. Thus, there is no question of any prejudice being caused to the Petitioners. However, without the conditions laid down in Section 10 of C.P.C. being satisfied, neither the trial Court nor this Court can stay the proceedings of the present suit, even under Section 151 of the C.P.C., as held in the above said judgment of the Hon'ble Supreme Court.

28] The impugned passed by the trial Court therefore being just, legal and correct; no interference is warranted therein. Hence, the Writ Petitions stand dismissed.

29] Rule discharged.

30] It is made clear that, whatever observations are made in this order are only for the purpose of deciding these Writ Petitions and they do not touch upon the merits of the suits which are to be decided at the time of final hearing.

[DR.SHALINI PHANSALKAR-JOSHI, J.]