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

Date of decision: 29th January, 2020

\+ **CM(M) 716/2018 and CM APPL. 25654/2018**

M/S R G OVERSEAS ..... Petitioner

Through: Mr. Aditya Garg and Mr. Prakash, Advocates (M: 9810246585).

versus

ADROIT TRADING NUTS PVT LTD ..... Respondent

Through: Mr. Jabhar Chaudhary and Mr. Harindra Singh, Advocate (M: 9717822673).

CORAM:

JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u>(Oral)

1. The present petition arises out of the impugned order dated 9th April, 2018, by which the application under Section 10 CPC moved by the Petitioner – M/s RG Overseas (hereinafter, "*RG Overseas*") has been dismissed by the Trial Court.

2. The background is that there was a transaction for supply of dry fruits between M/s Adroit Trading Nuts Pvt. Ltd., Delhi – the Respondent (hereinafter, "*Adroit*") to R.G. Overseas. The case of Adroit is that supplies were made and various bills were raised. The total sale value of the goods which were supplied was Rs.1,55,72,852/-. However, there was a shortfall in the amount which was paid by R.G. Overseas. Accordingly, a sum of Rs.4,50,000/- was stated to be outstanding and payable by R.G. Overseas to Adroit and accordingly a legal notice was issued by Adroit to R.G. Overseas dated 7th November, 2016 calling upon R.G. Overseas to make the outstanding payments.

3. R.G. Overseas, however, did not reply to the notice, but chose to file a suit in Amritsar seeking declaration and injunction (`Amritsar suit'). In the

said suit, the case of M/s R.G. Overseas was that there was a full and final settlement on 5th May, 2016, on which date, the amount due was Rs.7,22,476/- and Adroit had agreed to accept the amount of Rs. 2,72,476/-, while agreeing to set-off the remaining amount of Rs. 4,50,000/-. On the strength of this settlement, declaration and injunction were sought.

4. Written statement was filed by Adroit to the said suit, however, thereafter a suit for recovery of Rs.5,34,000/- including principal and interest was filed in the District Court, Tis Hazari by Adroit against R.G. Overseas (`Delhi suit'). In the Delhi suit, R.G. Overseas sought stay of the suit under Section 10 on the ground that in the Delhi suit, directly and substantially the same issues arose as those raised in the Amritsar suit.

5. Ld. counsel for the Petitioner – R.G. Overseas submits that the transaction being the same, issues being the same, the subsequent Delhi suit is liable to be stayed in view of the judgment in ***Punjab and Sindh Bank v. Lalit Mohan Madan & Co. (2012) 130 DRJ 436.*** Ld. counsel further submits that under Section 10 CPC, the only direction that has been prayed for is stay of the suit in Delhi and not for dismissal of the suit and hence, no prejudice would be caused if the Delhi suit awaits the decision in the Amritsar suit.

6. On the other hand, ld counsel for the Respondent – Adroit submits that the suit for recovery has been filed in the Tis Hazari Courts, as the transaction was culminated in Delhi, and the suit is not liable to be stayed as the issue to be determined by the court in the Delhi suit is as to whether a decree for recovery of amount is to be granted or not.

7. The parties are present, however, there is no possibility of settlement as R.G. Overseas is willing to pay without prejudice a sum of Rs. 2 lakhs but

Adroit is not willing to settle except for payment of Rs. 4 lakhs. Considering that this is a commercial transaction, since the parties are not settling the matter, the offers for settlement have been recorded for maintaining the same on the Court record and for deciding costs at the final stage.

8. The Court has heard ld. counsels for the parties and has perused both the plaints in the Amritsar suit and in the Delhi suit. The suit in Amritsar is one for declaration to the effect that the Plaintiff therein i.e. RG Overseas is not liable to make any payment to Adroit and its promoters, further for permanent injunction restraining them from claiming any amount and from harassing or humiliating R.G. Overseas for making payment. The further case of R.G. Overseas is that there has been a full and final settlement which was arrived at, pursuant to which the amounts agreed were paid. The cause of action in the Amritsar suit is also based on the legal notice which was issued by Adroit Trading. The relevant paragraphs of the Amritsar suit are set out below:

> *"...*
> *4. That ultimately, on 05.05.16, the amount of Rs. 7,22,476/- was due towards the defendants allegedly payable by the plaintiff and after admitting their goods to be of poor/defective quality supplied to the plaintiff, the defendants had agreed to receive the amount of Rs. 2,72,476/- from the plaintiff and had also agreed to set off the claim of the remaining amount of Rs. 4,50,000/- and assured the plaintiff that they will not claim this amount of Rs. 4,50,000/- and will accept the amount of Rs. 2,72,476/- in full & final settlement.*
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> *5. That accordingly, as per the settlement made between the parties, on 09.05.16, the plaintiff made the payment of Rs. 2,72,476/- to the defendants vide*

cheque no. 659251 and as agreed by them, the total amount was cleared after making set off of the claim of Rs. 4,50,000/- as stated above.

...

7. That in order to take revenge from the plaintiff, the defendants no. 2 to 5 in connivance with each other, with some malafide intention and ulterior motive, have started harassing, humiliating, forcing, threatening and pressurising the plaintiff unnecessarily and started claiming the amount of Rs. 4,50,000/- from the plaintiff which was set - off as agreed and mutually settled between the parties, whereas, the plaintiff is not now liable to pay this amount to the defendants after the period of about 6 months when the plaintiff had cleared the total amount by making payment of Rs. 2,72,476/- through cheque as stated above. Once the matter is resolved and settlement was made between the parties, then the defendants are left with no right to claim any amount from the plaintiff which was set off being rebate given by them on account of the defective goods of poor quality. As such, now there is no any kind of liability of the plaintiff towards the defendants. He is not liable to pay any amount to them. But the defendants have got issued a legal notice dated 07.11.16 claiming the said amount of Rs. 4,50,000/- alongwith interest on it @ 24% p.a. from the plaintiff which notice is illegal, malafide, just to harass and pressurise the plaintiff unnecessarily. As such, the necessity arose to file this suit which is the only efficacious remedy available to the plaintiff.

...

11. That the cause of action arose to the plaintiff to file this suit against the defendants on receipt of the aforesaid notice of the defendants through their lawyer in which they demanded the said amount from the plaintiff along with interest and threatened to harass, humiliate, pressurise the plaintiff unnecessary. It finally arose few fays ago when they flatly refused to *withdraw this notice and rather, gave open threats to harass the plaintiff and it is still arising continuously."*

9. The prayer in the Amritsar suit is as under:-

> *"14. It is, therefore, respectfully prayed that a decree for declaration to the effect that the plaintiff is not liable to pay any amount to the defendants nor there is any kind of liability of the plaintiff towards them and a decree for permanent injunction restraining the defendants, their agents, employees, representatives, privies etc. from claiming any amount from the plaintiff or harassing, humiliating, forcing, threatening or pressurising the plaintiff in any manner to make payment of any amount as the plaintiff is not to pay any amount to the defendants, may kindly be passed with costs in favour of the plaintiff against the defendants. Plaintiff be granted any other relief to which he is found entitled to under law and equity."*

10. This suit was filed on 22nd November, 2016. The valuation of the Amritsar suit is for Rs. 500/- and fixed Court fee of Rs. 50/- has been deposited. Thereafter, the suit in Delhi was instituted for recovery of a sum of Rs. 5,34,000/- along with interest. The relief sought in the Delhi suit is as under:

> *"PRAYER: -*
> *It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to -*
> *a. Pass a decree for recovery of Rs. 5,34,000/- (Rupees five lakhs and thirty four thousand only) in favour of plaintiff and against the defendant.*
> *b. Pendent-lite and future interest @ 24% P. A. may also be awarded in favour of plaintiff company and against the defendant upon the amount mentioned in the prayer clause upon realisation.*
> *c. Award cost of the suit in favour of the plaintiff company and against the defendant.*

d. Pass any other or further order (s) which this Hon'ble Court deem fit and proper in the facts and circumstances of the case in favour of the plaintiff company and against the defendant."

11. The only question is whether the Delhi suit is liable to be stayed in view of the pendency of the Amritsar suit under Section 10 CPC. A perusal of the judgement in ***Punjab and Sind Bank v. Lalit Mohan Madan & Co., (supra),*** relied upon by R.G. Overseas shows that in order for stay to be granted, various conditions that have to be fulfilled are as under:

"10. The essential ingredients for the applicability of Section 10 of the Code are that if the matter in issue between the parties 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 and both the proceedings are pending before the competent courts of law the second suit shall be stayed. This provision is mandatory. The object of Section 10 is to prevent courts of current jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The following essential conditions for the application of Section 10 of the Code can be broadly enumerated as under:

(a) There must be two pending suits on same matter,

(b) These suits must be between same parties or parties under whom they or any of them claim to litigate under same title,

(c) The matter in issue must be directly and substantially same in both the suits,

(d) The suits must be pending before competent Court or Courts,

(e) The suit which shall be stayed is the subsequently instituted suit.

11. One of the test of the applicability of Section 10 is whether on the final decision being reached in the

> *previous suit such a final decision will operate as res judicata in a subsequent suit; to decide whether the second suit is hit by Section 10, the test is to find out whether the plaint in one suit would be the written statement in the other suit or not. If this test is positive the decision in one suit will operate as res judicata in the other suit. This is the principal test on which Section 10 is applied."*

12. Thus, apart from the parties being the same, the issue must be directly and substantially the same in both the suits. The suit must be pending before the competent court and the judgment in the previous suit ought to operate as *res-judicata* in the subsequent suit. Applying these tests, even if it is presumed that a declaration is granted in the Amritsar suit, that would automatically not lead to a money decree being passed in favour of the Defendant in the Delhi suit. The Amritsar suit is in the nature of a declaratory action which is based on a threat i.e. the legal notice which has been issued by Adroit. The question as to whether Adroit, in the Delhi suit, is entitled to recovery can only be adjudicated in the Delhi suit after it discharges the burden i.e. after showing that it has in fact supplied the goods and that the money is in fact due.

13. In the Amritsar suit, the primary question would only be in respect of the settlement and as to whether such a settlement was in fact entered into or not. Thus, any decision in the Amritsar suit may not automatically lead to a decree being passed in the Delhi suit. The Delhi suit would still have to be adjudicated. Moreover, the initial demand was by Adroit and the Amritsar suit was like a pre-emptive action to stall filing of recovery proceedings and nothing more. The Amritsar suit, though filed first in point of time, has still not proceeded to trial. It has been four years since institution. R.G. Overseas

can pursue the Amritsar suit at its own pace and if the Delhi suit is stayed, there can be considerable delay in the adjudication of the recovery claim to the detriment of Adroit. In the impugned order, the Trial Court observes:

> *"8. One of the tests to determine whether or not a suit is covered within the ambit of section 10, CPC is to ascertain as to whether the outcome of the previous suit would operate as a res judicata for the subsequent suit. <u>The previous suit is for a negative declaration that the defendant herein does not owe any money to the plaintiff herein together with the relief of permanent injunction to restrain the latter from claiming any amount illegally. If the outcome of the previous suit is against the defendant herein (M/s R.G. Overseas), that would not operate as res judicata for the present suit. This is or the simple reason that the plaintiff herein (M/s Androit) would still have to prove its case before this Court.</u> It would still have to prosecute the present case, lead its evidence, cross-examine the witnesses, if any, of the defendant. In short, an outcome, adverse to the defendant herein, in the previous suit will not ipso facto accrue a right in favour of the plaintiff herein to recover the alleged amount due from the defendant herein (M/s Androit).*
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> *9. Not only this, in the present suit, the plaintiff has come with a positive assertion that it had supplied goods (dry fruits) worth Rs. 1,55,72,852/- out of which the defendant paid Rs. 1,51,22,852/- only, leaving a balance of Rs. 4,50,000/-; whereas the stand of the defendant is that the outstanding amount was only Rs. 37,22,476/- out of which Rs. 32,72,476/- was paid and the plaintiff agreed to waive off Rs. 4,50,000/- on account of defective goods. Thus, on the point of the outstanding amount, both the parties differ. On the point of amount paid, whereafter a balance of Rs. 4,50,000/- was left, both the parties again differ. The point therefore is that the averments of the defendant herein at the Amritsar Court on the aspect of the*

outstanding amount and on the aspect of the amount paid is materially at difference than the ones in the present suit. Thus, the basis on which the defendant sued at Amritsar Court is different than the basis of the present suit. It is thus the view of this Court that the issues are not directly and substantially the same as in the previous suit filed at Amritsar Court.

10. There is one more reason to it. The present suit is on a much wider canvas. The present suit is not only for recovery of Rs. 4.5 lacs, but also for pre-suit interest, pendente lite and future interest and the costs. If at the end of the trial, it is found that in fact Rs. 4.50 lacs is not due, but a lesser amount is due, this Court can very well pass a decree to that effect. The point therefore is that the previous suit is on a limited canvas as to whether the defendant is not liable to pay Rs. 4.50 lacs. However, the present suit is on a much wider canvas as stated hereinabove."

14. The prayer for stay under Section 10 is thus not liable to be granted in the present case. Staying the Delhi suit awaiting decision in the Amritsar suit would indefinitely delay the adjudication of a money claim. Even if it is held in the Amritsar suit, that there is no settlement between the parties, a decree for money cannot be granted in the said suit. The issue of settlement can be raised by R.G. Overseas, as a defence in the Delhi suit as well. Comprehensive adjudication of the disputes is thus possible only in the Delhi suit and not in the Amritsar suit.

15. Under these circumstances, it is held that the impugned order does not warrant interference. The petition and all pending applications are accordingly dismissed.

PRATHIBA M. SINGH
JUDGE

JANUARY 29, 2020/MR