

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.177/2018

PETITIONERS :
ORIGINAL
DEFENDANTS

1. Dr. Bais Surgical & Medical
Institute Private Limited, c/o A-5,
Indra-Uma Apartment, Corporation Colony,
North Ambajhari Road, Nagpur 400 010.
2. Dr. Vijay Chandra Singh Bais,
Age years, through his authorized
Power of Attorney Shri Ulhas Wasudeo Kelkar,
Age 67 years, r/o 90, Gandhi Nagar, Nagpur.

...VERSUS...

RESPONDENT :
ORIGINAL
PLAINTIFF

Dhananjay s/o Digamber Pande,
Age 52 years, Occ : Business,
r/o 416, Saraswati Apartments,
Khare Town, Dharampeth, Nagpur 440 010.

(Addl. Address – supplied vide Registrar's Ord.
Dt. 7.9.18)

(Additional Address of Respondent R-sole)

Dhanjay s/o Digamber Pande,
c/o 202 & 203, Bhanukant Complex,
B-Wings Jn. Of Western Express,
High Way, Goregaon (E),
Mumbai 400 063.

(Amendment carried as per Order dt.7.9.2018)

Mr. Ravi R. Srivastava, Advocate for Petitioners.
Mr. Rahul M. Bhangde, Advocate for Respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 21/09/2021

ORAL JUDGMENT

1. Heard Mr. Srivastava, learned Counsel for the Petitioners and Mr. Bhangde, learned Counsel for the Respondent. Rule. Rule returnable forthwith. Heard finally with the consent of the learned Counsel for the rival parties.

2. The Petition challenges the order passed below Exhibit-144, an application under Section 10 of the Code of Civil Procedure (C.P.C.), to stay the suit being Special (Commercial) Civil Suit No. 23/2017 (earlier S.C.S. No.422/2003) filed by the Respondent against the Petitioners for recovery, on the ground that the Respondent herein had earlier instituted proceedings before the Company Law Board, New Delhi, namely, Company Petition No.9/2001, which came to be allowed on 2/12/2004, by which the Petitioners were directed to allot 14,75,998 shares of Rs.10/- each in the Petitioner No.1 - Company to the Respondent. An option was also given to the Petitioner No.1 to refund the amount with 6% simple interest from the date of its investment to the date of

payment, if the Petitioner No.1 had reservations in the matter of such allotment, within four months thereof in one or more installments, the decision regarding which was to be communicated to the Respondent within a period of fifteen days.

3. It is an admitted position, that neither the shares were allotted, nor the amount was refunded, in pursuance of the order of the Company Law Board, as the decision of the Company Law Board was challenged by way of Appeal No. 7/2004 before this Court, which came to be dismissed on 8/6/2009. Against the dismissal of Appeal No. 7/2004, a Special Leave Petition came to be filed before the Hon'ble Apex Court bearing SLP (C) No. 19733 of 2009, in which leave came to be granted on 18/10/2010.

4. In the interim, by Resolution dated 15/12/2004, 14,75,998 equity shares of Rs.10/- each in the capital of the Company/petitioner no.1, were allotted to the Respondent. The manner, in which this allotment was done by increasing the shares of the Petitioner No.1 and its subsequent distribution was challenged by the Respondent before the Company Law Board, by

way of Company Petition No. 1/2005, in which by Judgment dated 9/8/2007, it was directed that the shares allotted to the Respondent should be purchased, either by the Company/ Petitioner no.1, or the second and third Respondent therein, at par value together with interest @ 6% per annum. This Judgment dated 9/8/2007 in Company Petition No.1/2005, was challenged by the Petitioners, by way of Company Appeal No.9/2008, which came to be dismissed by this Court on 21/4/2010, which, in turn, came to be taken up to the Hon'ble Apex Court by way of SLP(C) No.16760 of 2010, wherein by an order dated 2/8/2010, the Petitioner No.1 was directed to deposit a sum of Rs.2,59,18,525/-, which has since been deposited. In this Special Leave Petition also leave was granted on 18/10/2010.

5. The Respondent had already instituted Special Civil Suit No.422 of 2003 before the Civil Court at Nagpur on 9/6/2003 against the Petitioners, claiming a decree for refund of share application money; recovery of unpaid secured loans and interest thereupon.

6. In this suit, the Petitioners have filed their written statement on 1/10/2003 along with a counter-claim based upon a Judgment passed by the Superior Court of California, County of Orange, State of California, USA, dated 11/4/2002, whereby the claim of the Petitioner No.2 for recovery against the respondent, to the tune of US \$ 2,89,562 with 18% interest was allowed and in view of absence of a reciprocating Agreement under Section 44-A of the Code of Civil Procedure, a decree was sought in terms of the Judgment of the Foreign Court.

7. Mr. Srivastava, learned Counsel for the Petitioners submits, that in view of the leave granted by the Hon'ble Apex Court in the above Special Leave Petitions, wherein according to him, the entitlement of the Respondent in the share money, is in consideration, the same dispute having been raised in the Special (Commercial) Suit No. 23/2017 (earlier S.C.S. No.422/2003), the further proceedings in the suit need to be stayed.

8. Mr. Shrivastava, learned Counsel for the petitioners submits that even if the claim of the Petitioners may not fall strictly

within the ambit of Section 10 of C.P.C., the same can be done by invoking the powers under Section 151 of CPC. He relies upon *M. S. Sheriff, P.C. Damodaran Nair V/s State of Madras, M. Govindan, Damodaran, AIR 1954 Supreme Court 397 (Para 15); Manohar Lal Chopra V/s Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 Supreme Court 527 (Paras 20, 21 and 22); P. V. Shetty V/s B. S. Giridhar, (1982) 3 SCC 403; Subho Ram Kalita (deceased through L.Rs.) and others V/s Dharmeswar Das Koch and others, AIR 1987 Gauhati 73 (Para 17); and Kusheshwar Dubey V/s M/s Bharat Coking Coal Ltd. and others, (1988) 4 Supreme Court Cases 319 (Paras 7 and 8)*, in support of his contention.

9. Mr. Bhangde, learned Counsel for the Respondent submits that the Company Law Board, has a summary jurisdiction, and the proceedings filed before the Company Law Board, cannot be equated with that of a suit. He further submits, that for the purpose of Section 10 of C.P.C. to be attracted, there have to be two suits in competent Courts having concurrent jurisdiction, which in the present case, is absent. He submits, that merely because a part of the claim as raised in the suit regarding the shares allotted to the

Respondent, is pending adjudication, before the Hon'ble Apex Court, the same would not mean, that the entire subject matter of the suit, is before the Hon'ble Apex Court, as there are other claims raised in the suit. He, therefore, submits that the decision by the learned Commercial Court rejecting the Application under Section 10 of C.P.C. is correct. Reliance is placed upon *National Institute of Mental Health and Neuro Sciences V/s C. Parameshwara, (2005) 2 Supreme Court Cases 256 (para 8)* and *Neeta V/s Shiv Dayal Kapoor and others, 2013 SCC OnLine P & H 26888*.

10. I, have given my conscious consideration to the contentions raised by the rival parties. For the sake of ready reference Section 10 of C.P.C. is quoted as under :

“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.”

11. A perusal of Section 10 of C.P.C., would therefore, indicate that in order to attract Section 10, there have to be two suits between the same parties, in which the matter in issue is also directly and substantially in the previously instituted suit. The use of the expression "*suit*", is material, in as much as, the substantive rights of the parties, are decided by a Court of competent jurisdiction, in a suit.

12. The scope of Section 10 of C.P.C. and the test for its applicability have been laid down by the Hon'ble Apex Court in ***National Institute of Mental Health and Neuro Sciences*** (supra) , where the applicability was being tested between a suit instituted in the Civil Court qua proceedings before the Labour Court, 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 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 word “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.”

13. ***National Institute of Mental Health and Neuro Sciences***
(supra) was considered by the Hon'ble Apex Court in ***Aspi Jal and Ors. Vs. Khushroo Rustom Dadyburjor, (2013) 4 SCC 333*** and it was held as under :

“9. Section 10 of the Code which is relevant for the purpose reads as follows:

After quoting Section 10 CPC.

From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a court to which provisions of the Code apply, it shall not proceed with 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. For application of the provisions of Section 10 of the Code, it is further required that the Court in which 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 in which 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.

10. -----

11. -----

12. *As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what “the matter in issue” exactly means? As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where a few of the matters in issue are common and will apply only when the entire subject-matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue. As stated earlier, the eviction in the third suit has been sought on the ground of non-user for six months prior to the institution of that suit. It has also been sought in the earlier two suits on the same ground of non-user but for a different period. Though the ground of eviction in the two suits was similar, the same were based on different causes. The plaintiffs may or may not be able to establish the ground of non-user in the earlier two suits, but if they establish the ground of non-user for a period of six months prior to the institution of the third suit that*

may entitle them the decree for eviction. Therefore, in our opinion, the provisions of Section 10 of the Code is not attracted in the facts and circumstances of the case.”

14. Thus from the above what is necessary for the application of Section 10 of C.P.C. can be culled out as under :

- (a) There must be two suits;
- (b) Both the suits must be instituted in Courts which have concurrent jurisdiction meaning thereby that Court in which the previous suit is pending is competent to grant the relief claimed in the second suit too ;
- (c) the parties in both the suits must be the same or are litigating under the same title or claim;
- (d) the matter in issue is also directly and substantially in issue in the previously instituted suit, which would mean that the entire subject-matter in controversy is same and the provision will not apply where a few of the matters in issue are common.
- (e) the previously instituted suit must be pending;
- (f) both the suits must have been instituted in the Civil Court. [as held in ***National Institute of Mental Health and Neuro Sciences*** (supra) the language of Section 10 CPC suggests that it is a referable

to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute].

15. The above position in respect of the applicability of Section 10 of C.P.C. has to be considered in the contextual background of what was claimed in Company Petition No.9/2001 and the relief's as claimed in Special (Commercial) Suit No.23/2017 (earlier S.C.S. No.422/2003).

16. The prayers in Company Petition No.9/2001 were as under :

“(a) direct the Respondents to deliver and/or hand over the necessary share scrips of 14,75,998 equity shares of respondent No.1 company to the Petitioner;

(b) Supersede the present Board of Directors of the respondent company by removing respondent no.3 & 4 from the board;

(c) Declare that the removal of the petitioner from the post of the Managing Director of the company was illegal;

(d) Pursuant to prayer (c) above, direct the respondent company for the reinstatement of the

petitioner to the post of Managing Director of the respondent company;

(e) Declare that the removal of the petitioner from the board of directors of the respondent company was illegal;

(f) Pursuant to prayer (e) above, direct the respondent company to put the petitioner back on the board of directors of the respondent company.”

17. The particulars of claim in Special (Commercial) Suit No.23/2017 (earlier S.C.S. No.422/2003) whereof a decree is sought are as under:

“(1) Refund of share application

money .. : Rs.1,48,00,000=00

(2) Un-secured loans advanced by the plaintiff to the defendant

No.1 and not repaid : Rs.41,00,000=00

(3) Interest @ 18% on the aforesaid

amount i.e. Rs.189.00 lacs for the period

26.2.2001 to 8.6.2003. : Rs.87,71,652=54

Total amount due and claimed :

in the suit. : Rs.2,76,71,652=54

-----”

18. It would be apparent from the particulars of claim in Special (Commercial) Suit No.23/2017 (earlier SCS No.422/2003) as quoted above that the same is not identical to the claim as made in Company Petition No.9/2001, which relate to only part of the claim regarding the shares claimed by the respondent in the petitioner no.1/company and not to the claim no.2 in Special (Commercial) Suit No.23/2017 (earlier S.C.S. No.422/2003), which was never the subject matter of Company Petition No.9/2001 or Company Petition No.1/2005. That apart one of the reliefs claimed in Special (Commercial) Suit No.23/2017 (earlier S.C.S. No.422/2003) is refund of share application money of Rs.1.48 Crores, as against which what is claimed in Company Petition No.9/2001, is delivery or handing over the scrips of 14,75,998 equity shares of the respondent no.1 company. Thus both the reliefs as claimed are totally different. Thus one of the requirement of Section 10, namely that there should be an identity of the entire subject matter, is not satisfied. It may be that in pursuance of the judgment in Company Petition No.1/2005 the respondent may become entitled to the value of the shares, which as of now stands secured in view of the deposit made by the petitioners in the

Hon'ble Apex Court, in view of the interim directions dated 2/8/2010 in SLP (C) No.16760/2010, it however needs to be considered that Company Petition No.1/2005, has been instituted subsequently and that also does not cover the entire claim in the suit.

19. The further requirement is that the Courts in which the proceedings have been instituted should have concurrent jurisdiction. Section 2(11) of the Companies Act, 1956, which defines Court, as it then was applicable before its repeal, reads as under :

"2(11) "the Court" means, -

(a) with respect to any matter relating to a company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10 ;

(b) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence ;

Section 10 of the Companies Act of 1956, specified jurisdiction of 'Courts', as under :

“10. JURISDICTION OF COURTS.- (1) *The Court having jurisdiction under this Act shall be -*

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2) ; and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred -

(a) in respect of companies generally, by sections 237, 391, 394, 395 and 397 to 407, both inclusive ;

(b) in respect of companies with a paid-up share capital of not less than one lakh of rupees, by Part VII (sections 425 to 560) and the other provisions of this Act relating to the winding up of companies.

(3) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the

place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.”

The Company Law Board was constituted under Sec.10-E, of the Companies Act, 1956, which is quoted as under :

“10-E. CONSTITUTION OF BOARD OF COMPANY LAW ADMINISTRATION:

(1) As soon as may be after the commencement of the Companies (Amendment) Act, 1988, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration.

(1A) The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, before the commencement of the Companies (Second Amendment) Act, 2002 by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it before the commencement of the Companies (Second Amendment) Act, 2002 by the Central Government, by notification in the Official Gazette under the provisions of this Act or that other law.

(2) The Company Law Board shall consist of such number of members, not exceeding nine, as the Central

Government deems fit, to be appointed by that Government by notification in the Official Gazette :

Provided that the Central Government may, by notification in the Official Gazette, continue the appointment of the chairman or any other member of the Company Law Board functioning as such immediately before the commencement of the Companies (Amendment) Act, 1988, as the chairman or any other member of the Company Law Board, after such commencement for such period not exceeding three years as may be specified in the notification.

(2-A) The members of the Company Law Board shall possess such qualifications and experience as may be prescribed.

(3) One of the members shall be appointed by the Central Government to be the chairman of the Company Law Board.

(4) No act done by the Company Law Board shall be called in question on the ground only of any defect in the constitution of, or the existence of any vacancy in, the Company Law Board.

(4-A) [Omitted by the Companies (Amendment) Act, 1988, with effect from 31-5-1991.]

(4-B) The Board may, by order in writing, form one or more Benches from among its members and authorise each such Bench to exercise and discharge such of the Board's powers and functions as may be specified in the order ; and every order made or act done by a Bench in exercise of such powers or discharge of such functions

shall be deemed to be the order or act, as the case may be, of the Board.

(4-C) Every Bench referred to in sub-section (4B) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely : -

(a) discovery and inspection of documents or other material objects producible as evidence ;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses ;

(c) compelling the production of documents or other material objects producible as evidence and impounding the same ;

(d) examining witnesses on oath ;

(e) granting adjournments ;

(f) reception of evidence on affidavits.

(4-D) Every Bench shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and for the purpose of section 196 of that Code.

(5) Without prejudice to the provisions of sub-sections (4C) and (4D), the Company Law Board shall in the exercise of its powers and the discharge of its functions under this Act or any other law be guided by the principles of natural justice and shall act in its discretion.

(6) Subject to the foregoing provisions of this section, the Company Law Board shall have power to regulate its own procedure.”

A bare reading of Section 2(11) read with Section 10-E (4-C) of the Companies Act, 1956, would demonstrate that the Company Law Board is neither a Court nor the proceedings before it a suit, within the meaning of the expression as is understood in the normal parlance while considering what is a ‘suit’. The powers conferred upon the Company Law Board by Section 10-E(4-C) are limited to the extent which is indicated by (a) to (f) of Section 10-E(4-C) thereof and not otherwise. That apart the Company Law Board does not have concurrent jurisdiction with that of the “Court”, under the Code of Civil Procedure, rather their jurisdiction is exclusive of each other. Thus the second requirement is also absent.

20. The still further requirement is that the Court in which the previous suit is pending is competent to grant the relief claimed, in the subsequent suit, which stems from the concurrency of jurisdiction. The Claim in respect of recovery of unsecured loans, (particulars of claim no.2) was never a subject matter of Company

Petition No.9/2001 or Company Petition No.1/2005, nor did the Company Law Board have jurisdiction to entertain and decide such claim. Thus the this ingredient is also missing.

21. In view of the above position, it is clear that the requirements for the applicability of Section 10 of C.P.C. have not been satisfied by the petitioners, in view of which the rejection of the application by the learned Commercial Court, cannot be faulted with.

22. That takes me to the next contention of Mr. Shrivastava learned Counsel for the petitioners that the suit could also be stayed by invoking Section 151 of C.P.C.

23. In *M. S. Sheriff* (supra), relied upon by Mr. Shrivastava, learned Counsel for the Petitioners, the Court was considering the nature of precedence to be given as between civil and criminal proceedings, in which it was held that as between the two, the criminal matters would have a precedence.

24. In ***Subho Ram Kalita*** (supra) it has held that in a given case, even if the conditions under Section 10 of the C.P.C. were not satisfied, resort to Section 151 was permissible for staying a suit or for injuncting the plaintiff, provided the court was satisfied that such a recourse was necessary for the ends of justice or to prevent abuse of the process of the court and such action was not violative of any express and specific provisions of the Code of Civil Procedure.

25. In ***P.V. Shetty*** (supra), considering the fact that concurrent proceedings were initiated for eviction and fixation of rent, the subsequent suit for eviction was stayed on the ground that if this was not done, the earlier proceedings for fixation would be rendered infructuous, if the decree for injunction was passed.

26. In ***Kusheshwar Dubey*** (supra) it was held that while there could be no legal bar for simultaneous proceedings being taken, yet there may be cases, where it would be appropriate to defer disciplinary proceedings awaiting the disposal of the criminal case.

27. Thus in all these cases, the invoking of Section 151 of C.P.C., has been held to be an extremely rare exercise, only in the circumstances stated therein, and not as a general rule, and the view that each case, has to be decided on its individual basis, considering the fact position prevailing and the satisfaction of the Court regarding the existence of circumstances which would justify such invocation.

28. In fact in *Manohar Lal Chopra (supra)*, itself relied upon by Mr. Shrivastava learned Counsel for the petitioners, though it has been held that the power under Sections 151 of C.P.C., was in addition to the other provisions, as contained in the Code, and could be invoked, where the powers were deemed ineffective, to consider redress in a particular situation, at the same time, it has also been categorically held that these powers are not to be exercised, when its exercise may be in conflict with what has been expressly provided in the Code.

29. This position regarding invoking of Sec.151 CPC, has been also considered by the hon'ble Apex Court in *National Institute*

of Mental Health and Neuro Sciences (supra), where after considering *Manohar Lal Chopra* (supra), it has been held as under :

“12. In the case of Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal [AIR 1962 SC 527 : 1962 Supp (1) SCR 450] it has been held that 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. In the present case, as stated above, Section 10 CPC has no application and consequently, it was not open to the High Court to bypass Section 10 CPC by invoking Section 151 CPC.”

which in my considered opinion, adequately address the submission of Mr. Shrivastava, learned Counsel for the petitioners, regarding the invoking of the inherent powers under Section 151 of C.P.C.

30. In view of the above position, what is clear is that in the facts of the present matter, claim in the suit, is not restricted to the claim for shares, but is also in respect of the refund of amounts on

other counts as indicated above and thus Section 10 of C.P.C. has no applicability.

31. There is yet one more factor, which is that a counter-claim has been filed by the Petitioners, which also needs to be decided, in the same suit.

32. In that view of the matter, I am of the considered opinion, that the application for stay of suit as filed by the petitioners, does not satisfy the requirements of Section 10 CPC, and therefore, has rightly been rejected by the learned Commercial Court.

33. It is, however, needless to mention, that since the claim for refund of the share application money, is one of the claims in the suit, which will be considered and decided in the suit, due regard shall be had to the proceedings pending before the Hon'ble Apex Court, and the decision rendered therein, if the same is decided by the time the suit sees an end and in case the same are not decided, any decree passed in the suit shall be subject to the result in the

proceedings pending before the Hon'ble Apex Court. The writ petition is, therefore, dismissed. Rule stands discharged. There shall be no order as to costs.

34. Mr. Shrivastava, learned Counsel for the Petitioners, in view of the order dated 12/1/2018 granting interim stay to the further proceedings in Commercial Case No.23/2017, seeks a continuation of the stay for a period of eight weeks from today. Mr. Bhangde, learned Counsel for the respondents opposes the stay. Considering that, the proceedings in Commercial Case was stayed, during the pendency of the petition, the same shall continue for a period of six weeks from today.

(AVINASH G. GHAROTE, J.)

Yadav VG