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

WRIT PETITION 4722 OF 2014

Mr. Pushkar Kulkarni

... Petitioner.
(Org. Defendant)

Versus

Efkon India Pvt. Ltd.,

... Respondent.

Mr. Rohan Savant, Advocate i/by Suvarna Joshi for the
Petitioner.

Mr. Harsh Meghani, Advocate a/w. Mona Malvade i/by
Chambers of Javed Gaya for Respondent.

CORAM : ROHIT B. DEO, J.

DATE : JULY 04, 2022

P.C. :-

1. The challenge is to the order dated 19.08.2013 rendered by the 31st City Civil Court at Mumbai in Notice of Motion 2094 of 2013 preferred by the Petitioner/ Defendant in Suit 799 of 2013, seeking stay of the said Suit, whereby the said Motion, invoking section 10 of the Code of Civil Procedure (Code), is rejected.

2. In the context of the controversy, it would be relevant to note the nature and the relief claimed in Suit 5153 of 2012

which, according to the Petitioner-Defendant in Suit 799 of 2013, is the prior instituted suit.

3. Suit 5153 of 2012 seeks money decree of Rs. 7,82,873 (Rupees Seven Lakh Eighty-Two Thousand and Eight Hundred Seventy-Three Only) which, according to the Plaintiff in the said suit, is receivable from the Defendant under the following heads :-

Sr. No.	Particulars of claim	Amount due (in Rs.)
1	Leave Travel Allowance	39,113.00
2	Salary for a period of 13 days in September, 2012	3,18,829.00
3	Leave encashment	3,98,538.00
4	Reimbursement	26,393.00
	Total	7,82,873.00

4. Special Civil Suit 799 of 2013 is instituted by the present Respondent against the Petitioner, seeking money decree of Rs.49,85,460/- (Rupees Forty Nine Lacs Eighty Five Thousand Four Hundred Sixty Only) on the premise, interalia that the Defendant has misappropriated the funds of the Plaintiff Company. It would not be necessary to delve deeper in the

averments in the S.C.Suit 799 of 2013.

5. The Notice of Motion purportedly invoking Section 10 of the Code is on the premise that the issues involved in prior instituted Suit 5153 of 2012 and in Civil Suit 799 of 2013 are identical and at any rate the issues which are involved in the later instituted suit are directly and substantially in issue in the previously instituted suits between the same parties.

6. The learned trial Judge has rejected the Application on the premise that the causes of action in the two suits are distinct and, therefore, no case is made out for stay of the later suit.

7. I am in complete agreement with the view taken by the learned trial Court. Considering that the subsequently instituted suit is predicated on the allegations of financial misappropriation and breach of fiduciary relationship and the previously instituted suit is restricted to certain service benefits, by no stretch of imagination it can be said that the issues in the later suit are directly and substantially involved in the previously instituted suit.

8. The learned counsel for the Petitioner, however, argues that the Respondent has claimed that the amount claimed in the plaint is arrived at on factoring certain payments due to the Petitioner. Assuming this to be the position, still that is not the consideration for stay of the suit. The Petitioner is, therefore, free to agitate the said contention at an appropriate stage and to seek adjustment or set-off.

10. There is additional reason why I am not inclined to interfere. This Petition is pending since 2014 and no attempt is made to secure interim order. The docket reveals that the last date of hearing was in 2016 or thereabout. In the interregnum both the suits have progressed substantially.

11. I see no reason to interfere in writ jurisdiction. Petition is dismissed.

(ROHIT B. DEO, J.)

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