



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

Writ Petition (WP) No. 3208 of 2022

Taramati Shaebrao Dhandar

Versus

Nikita Wd/o Kishor Dhandar and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Ram Karode, Advocate for the petitioner.

Shri P.S. Tiwari, Advocate for the respondent no.1.

CORAM : ANIL S. KILOR, J.

DATED : 11th OCTOBER, 2023.

Heard.

2. The order below Exhibit 29 rejecting the application preferred by the petitioner for staying of the suit namely Regular Civil Suit No. 52 of 2022 filed under Section 10 of the Code of Civil Procedure, 1908, passed by learned Jt. Civil Judge, Junior Division, Buldhana in Regular Civil Suit No. 52 of 2022, is under challenge in this writ petition.

3. The respondent no.1 filed two different suits i.e. Regular Civil Suit Nos. 60 of 2022 and 52 of 2022.

4. In Regular Civil Suit No. 60 of 2022, the defendants were as follows:

1) Sahebrao S/o Tejrao Dhandar,

- 2) Sau. Taramati W/o Sahebrao Dhandar
- 3) The Commanding Officer, 18-Maratha Light Infantry, C/o 56. APO Jamnagar 91618 State of Gujrath
- 4) The Record, Maratha Life Infantry, Pincode 901124, C/o 56-APO, Belgaon
- 5) Station Head Quarters, through its Head Officer, Indian Army, Bhusawal, District Jalgaon Khandesh

5. Whereas, in Regular Regular Civil Suit No. 52 of 2022, the defendants were as under

1. Branch Manager, State Bank of India, Main Branch Buldana.
2. State Bank of india, Branch at Dhad, through its Branch Manager, Tq. and Dist. Buldana
3. Taramati Shaebrao Dhandar.

6. The application filed under Section 10 of the CPC was rejected by the trial Court for the reasons recorded in paragraphs 6 to 9 which read thus:

6. If the first condition is considered, it is clear that the present suit is in between plaintiff, defendant no.3 and two branches of State Bank of India. Minute perusal of the certified copy of the plaint in Regular Civil Suit No. 60 of 2022 shows that it is in between the present plaintiff Nikita, Taramati and other four defendants amongst whom the branches of State Bank of india are not included. Least to say, the parties in both the suits are not same.

7. Coming to the issues in between both suits, here plaintiff has prayed for declration of her status as

Class-I heir of the deceased husband along with defendant no.3. Similarly, she has prayed for perpetual injunction against defendant no.3, to protect her legal rights. If plaint in Regular Civil Suit No. 60 of 2022 is perused, plaintiff Nikita has instituted that suit with similar prayer of similar declaration as to her status as widow of the deceased. The second prayer in that suit is about injunction in respect of service benefits of the deceased husband, which the defendants therein shall not release. She has also prayed for grant of succession certificate in view of Section 372 under the Indian Succession Act, 1927 in the said suit before the Civil Judge, Senior Division, Buldana. So, it is clear that except the aspect of declaration of status of plaintiff, the prayer in both suits are distinct.

8. Moreover, though both the suits are pending, the present suit carries registration number as Regular Civil Suit No.52 of 2022 and the other suit bearing registration number as Regular Civil Suit No. 60 of 2022. It is necessary to mention that the plaint in this suit has been examined and ordered to be registered on 19th March, 2022. Whereas the plaint in the other suit has been examined and ordered to be registered on 29th March, 2022. I am of the view that, the date of registration of the suit is the date of its institution. No matter when the plaint has been received, suit can be said to be instituted only when the plaint has been examined and ordered to be registered. Therefore, it is clear that the present suit is former/earlier, whereas the other suit is latter/subsequent in respect of its institution. Therefore, it is clear that the present suit being previous in point of time cannot be stayed at all using Section 10 of the Civil Code.

9. Thus, it is clear that the four conditions which are necessary for application of section 10 of

Civil Code do not mutually exist in respect of both suits. The learned Advocate Mr. A.V.Deshmukh for defendant no.3 has placed is reliance on observation in case of Brijlal S/o Ananda Patil Vs. Indubai Brijlal Patil. He has also relied upon observations in cases of Suresh Malappa Shetty Vs. Special Recovery Officer and others and of Harcharanjit Singh Thind and others Vs. Deeksha Thind and others. As against it, the learned Advocate for plaintiff Mr. Arif Sayyad has rest his case with reliance on observations in case of Mr. Aspi Jal and another Vs. Mr. Khushroo Rustom Dadyburjor, and Ranjuram and another Vs. Nandlal and others.”

7. After considering the language of Section 10 and the findings recorded by the learned trial Court while rejecting the application, I do not find any merit in the present writ petition. Accordingly, the petition is dismissed.

[ANIL S. KILOR, J.]