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2023:PHHC:145290

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-6847-2023

Date of decision: 15.11.2023

M/s Neeraj Stationary Mart and another

.... Petitioners

Versus

State Bank of India and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Deepak Arora Advocate, for the petitioners.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 04.10.2023 (Annexure P-18) passed by learned Additional Civil Judge (Senior Division), Mukerian, District Hoshiarpur, whereby the application moved by the petitioners/defendants under Section 10 CPC, has been dismissed.

2. Brief facts, as culled out from the petition, are that respondent No.1-plaintiff-State Bank of India filed a suit for recovery of Rs.17,85,817/- against the petitioners and proforma respondent No.2-Rajnish Kumar, since the petitioners failed to repay the payment. The petitioners filed written statement denying the averments made in the plaint and prayed for dismissal of the suit. The petitioners also moved an application under Section 10 CPC (Annexure P-17) for staying the proceedings of the suit filed by respondent No.1-plaintiff on the ground that they have filed CWP No.9659 of 2022 titled

as *Neeraj Kumar Versus State Bank of India* before this Court, whereby recovery of the amount due towards the petitioners has already been stayed vide order dated 09.05.2022. It was pleaded that the matter regarding recovery is already subjudice before this Court and in the said proceedings, the parties and issue relating to payment is exactly the same, and, therefore, the proceedings in the suit may be stayed. Reply to the said application was filed by the respondent No.1-plaintiff. Vide order dated 04.10.2023, said application was dismissed.

3. Learned counsel for the petitioners has submitted that petitioner No.1 through its proprietor i.e. petitioner No.2 approached respondent No.1-plaintiff-Bank for grant of credit hypothecation limit in the name of petitioner No.1 for meeting the working capital requirement of business of petitioner No.1. The respondent-Bank, after considering the proposal, sanctioned the credit facilities to petitioner No.1. The proforma respondent No.2 mortgaged his immovable property in consequence thereof and stood guarantor for repayment of the loan amount. Since the petitioners were ready to settle account with the bank and even had drawn due proposal for one time settlement in response to the OTS scheme as advertised by the Bank, however, the Bank failed to consider the case of the petitioners for extending the benefit of OTS scheme and on the other hand, in order to harass the petitioners, the respondent-Bank initiated proceedings against them. The petitioners approached this Court by way of CWP No.190 of 2021 and vide order dated 07.01.2021, a direction was issued to the Bank to extend the benefit of OTS scheme. It is contended that the Bank deliberately suppressed the material facts from this Court. The petitioners admitted their liability

towards the bank that some odd amount of money is due towards petitioners. They are ready to repay the amount and their basic concern is only to reschedule the credit facilities as availed by them. Since the Bank officials were unduly harassing the petitioners, they again approached this Court by way of CWP No.9659 of 2022 and vide order dated 09.05.2022, the order of recovery of dues towards the petitioners was already stayed. The said writ petition is pending (Annexure P-16) in this Court.

4. It is submitted that since the matter in issue in the said writ petition and in the suit are the same, so the proceeding in the suit deserves to be stayed.

5. I have heard the submissions of learned counsel for the petitioners and have gone through the file.

6. Section 10 of CPC reads as under:-

“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.”

7. As per Section 10 CPC, if the matter in issue is also directly and

substantially in issue in a previously instituted suit between the same parties, or between the parties under whom they or any of them litigating under the same title, then the subsequent suit cannot proceed further.

8. Admittedly, no other suit is pending between the parties. Pendency of writ petition is no ground to stay the proceedings of civil suit.

9. In view of above, since there is no previous suit pending between the parties and pendency of writ petition is no ground to stay the proceedings in a civil suit, this Court does not find any illegality in the order passed by the court below. The present revision petition is accordingly, dismissed.

(GURBIR SINGH)
JUDGE

November 15, 2023
sanjeev

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No