



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5028 OF 2023

MADHUKAR SAMBHU YADAV AND OTHERS
VERSUS
RAMA BHIVRAO YADAV

Mr. S. Y. Mahajan, Advocate for the petitioners
Mr. K. R. Doke, Advocate for the respondent

CORAM : R. M. JOSHI, J.
DATE : 30th JULY, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. Petitioners/defendants in R.C.S. No. 148/2015 take exception to the rejection of application filed by them vide Exhibit 83 under Section 10 of the Code of Civil Procedure (for short 'CPC'). It is the contention of the petitioners that R.C.S. No. 96/1982 filed by petitioner No.1 against predecessor of the respondent has been decreed on 17/07/1984. The execution proceedings in regard to the said decree is pending bearing R.D. No. 29 of 1996. It is further contention of the learned counsel for the petitioners that thereafter the respondents filed collusive suit bearing R.C.S. No. 148/2015 and the subject matter of the said suit is the same as it was in R.C.S. No. 96/1982. Petitioners filed written statement

placing the this fact on record before the Trial Court. Application Exhibit 83 was filed for seeking stay of the R.C.S. No. 148/2015.

3. Learned Trial Court rejected the said application by referring to the provisions of Section 10 of the CPC with observation that R.C.S. No. 96/1982 is admittedly decreed and trial of the suit is not pending. On this ground, application is dismissed.

4. Learned counsel for the petitioners has sought to bring to the attention of the Court fact that the suit property which is subject matter of R.C.S. No. 148/2015 is duly covered by the decree dated 19/07/1984 passed in R.C.S. No. 96/1982. It is his submission that the present suit is collusive one and it is intended to frustrate execution of the decree and hence the same cannot be allowed to proceed. To support his submissions he placed reliance on following judgments.

(i) Aspi Jal and Anr V. Khushroo Rustoom Dadyburjor, AIR 2013 SC 1712.

(ii) Indian Bank V. Maharashtra State Co-operative Marketing Federation Ltd., AIR 1998 SC 1952.

5. Learned counsel for the respondent supported the impugned order on the ground that the requisite conditions contemplated by Section 10 of CPC are not fulfilled in this case to stay R.C.S. No. 148/2015 and as such there is no justification for causing interference in

the impugned order.

6. It would be altogether different issue, if petitioners seek to contend that the issue involved in R.C.S. No. 148/2015 cannot be adjudicated, in view of Section 47, which enables the Execution Court to determine, if it is covered by this provision. However, for the purpose of stay of suit under provisions of Section 10 of CPC, there has to be pending suits for adjudication in order to seek invocation of the said provision. The said provision is reproduced for the sake of convenience.

"10. Stay of suit – No Court shall proceed with the trial of any sit 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]."

7. It is thus clear that if there are two suits pending in which the same subject matter is involved for adjudication, the subsequent suit cannot be permitted to be continued and provisions of Section 10 of CPC could be invoked in order to cause stay to the subsequent proceeding. Herein this case, since it is admitted fact that R.C.S. No. 96/1982 is not pending for adjudication, the basic requirement of pendency of two suits for adjudication is not fulfilled. It cannot be said that execution

proceeding pending for execution of the decree passed in R.C.S. No. 96/1982 involves any adjudication of dispute between the parties. It being so this Court finds no reason to accept the contention of the petitioners for challenge to the impugned order.

8. Petition stands dismissed as it sans merits.

(R. M. JOSHI, J.)

ssp