IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.962 of 2017

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M. L. Sureka S/o Late Kedarnath Sureka, proprietor of the firm named and styled as M.L. Sureka and Co., Ezra Street, P.S.- Hare Street, Kolkata-700001.

... ... Petitioner

Versus

1.1. Binay Kumar Mishra, Son of late Diwa Kant Mishra, Resident of Village-Manguraha, P.S. Govindganj, District-East Champaran, Presently residing at Qr. No. E 1/63 Barauni Refinery Township, Begusarai.

1.2. Satyendra Kumar Mishra, Son of late Diwa Kant Mishra, Resident of Village- Manguraha, P.S. Govindganj, District-East Champaran, Presently residing at Qr. No. E 1/63 Barauni Refinery Township, Begusarai.

2. Jay Hind Kabra, S/o Late Jagannath Kabra, proprietor of the firm named and styled as Kabra and Co. Office at 2 India Exchange Place, 2nd Floor, Kolkata- 700001.

3. Mr. Subrata Kunda Chaudhary, Office at 17 Dr. Chatterjee Lane, P.S.-Serampore, District- Hoogly, S

4. Mr. Sib Kinkar Mallick, S/o Durlav Kumar Mallick, residing at Ghoshpara, 2nd lane, Sermapore, District- Hoogly, State- West Bengal.

5. Mr. Ram Sagar Sinha, S/o late Ram Sharan Singh, a resident of Village-Bihat, Tola- Masnadpur, P.S.- Barauni, District- Begusarai, at present C/o Parmanand Singh, at Sun Flower School, Kapasia, District- Begusarai.

6. Vintage Capital Markets Ltd. Office at 227, Acharya Jagdish Chandra Bose Road, Kolkata.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Rajni Kant Jha, Advocate
For the Respondents	:	Mr. Satish Kumar, Advocate
		Mr. Mukesh Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL ORDER

12 24-07-2025 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the respondent 1st set.

2. The present civil miscellaneous petition has been filed against the order dated 06.03.2017 passed by learned Sub-Judge-VI, Begusarai in Money Suit No. 10 of 2003, whereby and whereunder the learned Sub-Judge-VI, Begusarai rejected the

application dated 03.05.2016 filed by the defendant petitioner under Section 10 of the Civil Procedure Code (Hereinafter referred to as "CPC") seeking stay of the trial in Money Suit No. 10 of 2003 till disposal of Title Suit No. 1566 of 2001 filed by the petitioner before the 8th Bench of City Civil Court at Kolkata.

3. Learned counsel for the petitioner submits that petitioner has filed Title Suit No. 1566 of 2001 in the 8th Bench of City Civil Court at Kolkata seeking following reliefs:

> *(a) Declaration that the plaintiff had no obligation to make payment of value of the said shares to the defendant nos. 6 to 163 or any of them and that with the payment of the value thereof to the defendant no. 1 the plaintiff stood discharged of all his obligations as broker / dealer involved in the sale of the same.*
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> *(b) A decree of perpetual injunction restraining the defendants and particularly the defendant nos. 6 to 163 or any of them from either representing or holding out that they or any of them are entitled to the value of the said shares or any part or portion thereof from the plaintiff or from claiming or seeking to realize the same or any part or portion thereof from the plaintiff.*
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> *(c) Temporary injunction.*

4. The case of the petitioner is that he has been carrying on business as a stock and share broker and dealer in the name and style of "M.L. Sureka" through his registered firm. On the request of defendant no. 1, the petitioner agreed to transact in the shares of Indian Oil Corporation. The defendant nos. 6 to 163

were the registered shareholders of equity shares of Indian Oil Corporation who sold their shares during the period of December 1999 to March 2000 through defendant nos. 2 to 4, who in turn sold the shares to defendant no. 3 which was further sold to defendant no. 1, who had transacted the same through the firm of the petitioner and sold to shares to defendant no. 5 in National Stock Exchange and received the share scripts along with signed transfer deeds from defendant no. 1 and delivered them to defendant no. 5 and made all the payment to defendant no. 1 by A/C payee cheques and also by way of account adjustments. The petitioner never dealt with defendant nos. 6 to 163 directly and claimed that there was no privity of contract between the petitioner and defendant nos. 6 to 163 who sold their shares to Ram Sagar Singh, defendant no. 2. Petitioner made the payments through the bank and he claimed that he was not liable to any further payment as he was under no obligation to pay any amount to any of the defendants in respect of their shares as his liability stands discharged. All the payments were made to defendant no. 1 through whom the transaction was made.

5. During pendency of Title Suit No. 1566 of 2001, the petitioner filed an application under Order 39 Rule 1 and 2 read with Section 151 of the CPC and till 19.10.2001, the learned trial Court directed both the parties to maintain status quo in

respect of claiming the value of the shares in dispute. The plaintiff for Money Suit No. 10 of 2003 is the defendant no. 9 in Title Suit No. 1566 of 2001 and on 11.07.2003, he along with some of the defendants filed an application under Order 39 Rule 4 of the CPC for vacating the interim stay order and dismissing the injunction application. But the said petition was dismissed by the learned trial Court on 03.01.2005. The interim injunction which was effective till 19.10.2001 was extended till the disposal of injunction application. In Money Suit No. 10 of 2003, the plaintiff of the said case who was the original respondent no. 1, claimed that defendant / defendants were liable to make the payment of the consideration amount mentioned in the Schedule 1 of the plaint, i.e., Rs. 1,44,000/- (Rupees one lakh and forty-four thousand only) along with interest, which came to Rs. 1,88,880/- (Rupees one lakh eighty-eight thousand eight hundred and eighty only). This amount was claimed for sale of 1200 equity shares of Indian Oil Corporation through the defendants.

6. Meanwhile, petitioner filed an application on 05.12.2006 under Section 10 of the CPC to stay the proceedings of Money Suit No. 10 of 2003 till disposal of Title Suit No. 1566 of 2001 claiming that both the suits dealt with identical subject matter between the same parties.

7. Learned counsel for the petitioner did not turn up

for pressing this petition, the said petition was dismissed on 14.09.2010. Another application was moved on 29.01.2013 seeking leave of the Court to press his earlier application, but the said petition was also dismissed. In these facts and circumstances, the petitioner filed another petition on 03.05.2016, but the said petition filed under Section 10 of the CPC was dismissed on 06.03.2017 and against this order, the petitioner has approached this Court.

8. Learned counsel for the petitioner submits that the impugned order is not sustainable as it has been passed mechanically and without application of judicial mind. The learned trial Court of Sub-Judge-VI, Begusarai did not consider the fact that plaintiff of Money Suit No. 10 of 2003 has been restrained by the order of the competent Court at Kolkata from proceeding the matter of claim of his shares. Learned counsel further submits that since in the Title Suit No. 1566 of 2001, subject matter is the same and the plaintiff for Money Suit No. 10 of 2003 is also a defendant in the said case in the Title Suit No. 1566 of 2001, the subsequent suit could not proceed. The petitioner has claimed in the Title Suit No. 1566 of 2001 that he is not under any obligation to make payment to the defendant respondents since he has already made the payment and if the suit is decreed, the same would operate as *res judicata* against the

claim of the respondent 1st set in Money Suit No. 10 of 2003.

9. Learned counsel further submits that since the parties are same and subject matter is also same, any subsequent suits could not be allowed to proceed and therefore the learned trial Court erred in rejecting the application of the petitioner by the impugned order.

10. Learned counsel for the petitioner further submits that so far as other defendants not being parties in the present case is concerned, complete identity of either the subject matter or the parties is not required for application of Section 10 of the CPC and relied on the Division Bench decision of the Kolkata High Court in the case of ***Shorab Merwanji Modi & Anr. v. Mansata Film Distributors & Anr.*** reported in ***AIR 1957 CAL 727***.

11. Learned counsel appearing on behalf of respondent 1st set vehemently contended that there is no infirmity in the impugned order. Learned counsel submits that petitioner has twice approached the learned trial Court with same prayer and both the applications were rejected. On similar contention, the present petition has been rightly rejected by the learned trial Court. Learned counsel further submits that the petitioner is a share broker and when the respondent 1st set pledged his share for sale, he did not receive any payment by the petitioner or any of the defendants. He further submits that issue in Title Suit No. 1566 of

2001 pending before the Court of Civil Judge, Kolkata is different from the Money Suit No. 10 of 2003 and therefore the learned trial Court has rightly rejected the application filed by the petitioner under Section 10 of the CPC. Learned counsel further submits that the learned trial Court has also taken note of the fact that the present case has been running since the year 2003 and all the witnesses have been produced by the plaintiff and the matter has been fixed for evidence of defendant but even after lapse of about 22 years, the defendant did not examine a single witness and in order to delay the disposal of the Money Suit, he has filed repeated applications under Section 10 of the CPC to stay the proceeding in the garb of pendency of Title Suit No. 1566 of 2001. Learned counsel further submits that even after filing of Title Suit by the petitioner in the year 2001 and by the respondent in Money Suit by the year 2003 due to the conduct of the petitioner, both the suits are stuck and have not proceeded further, though in their suit, the respondent 1st set has examined all their witnesses.

12. I have given my thoughtful consideration to the rival submissions of the parties and also perused the record.

13. Section 10 of the 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][Substituted by Act 2 of 1951, Section 3, for " the States".]established or continued by [the Central Government][Substituted by A.O. 1937, for " the G.G. in C.".][* *][The words " or the Crown Representative" omitted by A.O. 1948.]and having like jurisdiction, or before [the Supreme Court][Substituted by A.O. 1950, for " His Majesty in Council".].*

Explanation.-The pendency of a suit in a foreign Court does not preclude the Courts in [India][Substituted by Act 2 of 1951, Section 3, for " the States".]from trying a suit founded on the same cause of action."

14. Coming back to the facts of the case, in Title Suit No. 1566 of 2001, the petitioner has been claiming that he is not liable to make payment of any money to the defendants who pledged their shares through the petitioner since he has already made the payment and has sought declaration to that effect. The suit had been instituted against altogether 163 defendants. On the other hand in Money Suit No. 10 of 2003, only six persons have been made defendants who are the plaintiff of Title Suit No. 1566 of 2001 and the first five defendants. Evidently, the parties in these two Suits are not the same. The plaintiff in Title Suit No. 1566 of 2001 has sought declaration that plaintiff had no obligation to make payment of the value of these shares to defendant nos. 6 to

163 and his liability stands discharged with the payment of the value thereof to the defendant no. 1. Apart from seeking a decree of the perpetual injunction restraining the defendants and particularly the defendant nos. 6 to 163 from claiming that they are entitled to the value of the said shares. The case of respondent nos. 1.1 and 1.2 on the other hand in Money Suit No. 10 of 2003 is not only against the plaintiff of Title Suit No. 1566 of 2001, but also against defendants / respondent nos. 2 to 6 for making payment of the consideration amount mentioned in Schedule 1 of the plaint, which is the value shares as well as the interest amount accruing due to non-payment. Therefore, the subject matter is not identical and the parties in two Suits are not the same. Reference could be made to paragraph no. 8 of the decision of the Hon'ble Supreme Court in the case of ***National Institute of Mental Health & Neuro Sciences v. C. Parameshwara***, reported in ***(2005) 2 SCC 256***, which reads 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 the 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 words "directly and substantially in issue" are used in contra-distinction 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 subject matter in both the proceedings is identical."*

Therefore, it is apparent that Section 10 of the CPC will be applicable and subsequent Suits can be stayed if the parties are same and whole of the subject matter is also identical in both the Suits. Apparently, the facts of the case do not show such similarity between the two Suits. Therefore, Section 10 of the CPC will not be applicable for staying the Money Suit No. 10 of 2003.

15. Further, facts which need to be taken note of that in Title Suit No. 1566 of 2001, admittedly, the Suit has not proceeded as in inch further and not even issues have been framed. Even the application for injunction has been pending, though the learned trial Court passed some status quo order till the disposal of the

injunction application, which *prima facie* appears absurd as the plaintiff got the final relief by way of such injunction order. On the other hand, in Money Suit No. 10 of 2003, the evidence of plaintiff has concluded and the matter is fixed for evidence of defendant / petitioner herein. The petitioner repeatedly filed applications seeking stay on the proceedings, but he purposely did not move or did not press the same except the last one. The petitioner could not be allowed to subvert the judicial proceeding to his advantage. Moreover, the procedural law is intended to facilitate the administration of justice and not to obstruct it. The Hon'ble Supreme Court in the case of ***State of Gujarat v. Ramprakash P. Puri & Ors.*** and ***State of Gujarat v. Satu Khayaldas & Ors.***, reported in ***1969 (3) SCC 156,*** held that procedure has been described to be a hand-maid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Therefore, in the given facts and circumstances, the impugned order could not be faulted.

16. In light of discussion made herein before, I find no error in jurisdiction on part of the learned trial Court in passing the impugned order dated 06.03.2017 and hence, the said order is affirmed.

17. Accordingly, the present petition stands dismissed.

18. Since, the Money Suit No. 10 of 2003 has been pending before the learned trial Court for more than twenty-two years, learned trial Court is directed to proceed in the matter showing urgency and dispose it off at the earliest and preferably within six months from the date of receipt / production of a copy of this order.

(Arun Kumar Jha, J)

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