

JPD-15
Ct No.01
24.07.2025
(sss)

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 128 of 2025

The West Bengal State Electricity Distribution Company
Limited
Vs.
M/s. Sevoke Properties Private Limited

Mr. Supriyo Chattopadhyay,
Mr. Mayank Bhandari
....For the Petitioner.

1. The present challenge has been preferred by the defendant in a suit claiming mesne profits for a particular period for alleged unauthorized occupation of the suit property by the defendant/petitioner.
2. Learned counsel appearing for the petitioner submits that in a previous suit for mesne profits for a different period, the plaintiff/opposite party relied on the valuation report of a company by the name of M/s. Talbot & Co.
3. The said suit was decreed, against which an appeal has been preferred and an order of stay has been obtained on condition of deposit of the entire decretal amount of Rs. 39 Crore.
4. However, thereafter, the present suit was again instituted against the petitioner by the self-same

plaintiff/opposite party for mesne profits, although for a different period but relying on the valuation report of the sel- same company i.e. M/s. Talbot & Co.

5. Learned counsel argues that since the primary ground in the appeal against the decree passed in the previous suit is a challenge to the valuation report authored by the said agency i.e. M/s. Talbot & Co., there would be unnecessary multiplicity of proceedings in the event the present suit is allowed to be continued, since the premise of the present suit is, again, the valuation report of M/s. Talbot & Co. As such, the defendant/petitioner sought for a stay of the current (second) suit till disposal of the first appeal pending against the previous decree, which, having been refused by the impugned order, the present revision has been preferred.

6. Upon a careful consideration of the arguments of learned counsel for the petitioner, this court cannot find any fault with or jurisdictional error in the impugned order. The learned Trial Judge proceeded to refuse the stay on the premise that the instant suit has been filed on a totally different cause of action and as such, the principle of Section 10 of the Code of Civil Procedure cannot be applied.

7. The principle as embodied in Section 10 of the Code of Civil Procedure is where there is a previous pending suit in respect of substantially the same

subject-matter, a second suit could not be proceeded with. However, the period for which the mesne profits have been claimed in the present suit is different from that in the earlier suit against which an appeal is pending.

8. The mere fact that a valuation report authored by the self-same agency, which will only be a piece of evidence in both the proceedings, has been relied on by the plaintiff, is not a determinant of the “subject matter” of the two suits.

9. Thus, the learned Trial Judge correctly refused to apply the principle of Section 10 of the Code of Civil Procedure.

10. Although it is trite law that the court can, in certain circumstances, grant stay of a suit or proceeding even if the conditions of Section 10 of the Code are not met *ex debito justitiae*, such a situation has not been made out by the defendant/petitioner in the present case. As such, this court does not find any jurisdictional error and/or illegality in the order of the learned Trial Judge to justify interference with the impugned order.

11. Accordingly, CO 128 of 2025 is rejected without, however, any order as to costs.

(Sabyasachi Bhattacharyya, J.)