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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4804 OF 2017**

Daulat Tara Dhale ... Petitioner

Vs.

Mohan Devappa Kambale and Others ... Respondents

Mr. Manoj Shirsat i/b. Mr. Nitin B. Patil for the Petitioner.

Mr. Prashant P. Kulkarni for Respondent No.1.

CORAM : GAURI GODSE, J.

DATE : 17th JUNE 2025

ORDER :

1. Pursuant to the notice issued by this court, respondents are served. By consent, the petition is taken up for final disposal.

2. Respondent No.1 filed Regular Civil Suit No. 70 of 2007 seeking specific performance of an agreement regarding the landed property owned by the petitioner and the remaining respondents. Subsequently, the petitioner and the remaining respondents instituted Regular Civil Suit No. 240 of 2014 against respondent no. 1, seeking possession of the suit land after removal of the construction carried out by respondent no.1 and the arrears towards ground rent.

3. In the second suit, respondent no.1 filed an application under Section 10 of the Code of Civil Procedure,1908, seeking a stay of the subsequently instituted suit. Since the issues in both suits are directly and substantially the same, the learned District Judge allowed the application under Section 10 and stayed the proceedings of the subsequently instituted suit. Hence, this petition.

4. Learned counsel for the petitioner submitted that in the first suit, issues are framed, and an evidence affidavit is filed by the plaintiff, and the suit is pending for cross-examination. So far as the second suit is concerned, the same is pending for framing issues. He submits that the parties in both the suits and the subject matter of both the suits are the same. He submits that if respondent no.1 fails in the suit for specific performance, the petitioner and the remaining respondents would be entitled to seek the prayer for possession in the subsequently instituted suit. He therefore submits that it would be advisable that both suits be clubbed and tried together.

5. Learned counsel for respondent no.1 submits that the second suit is filed at a belated stage when the first suit was

already ripe for hearing. He submits that in the event respondent no.1 succeeds in his suit, nothing would remain in the subsequently instituted suit for possession. He thus submits that, since the issues in both suits are directly and substantially the same, the learned District Judge has rightly stayed the subsequently instituted suit.

6. I have perused the papers of the petition. Respondent No.1 has prayed for specific performance of the landed property owned by the petitioner and the remaining respondents. The petitioner contends that the respondent no.1 has carried out construction on the land. The petitioner and the remaining respondents have prayed for possession of the suit land on the ground that it was given on rent to respondent no.1. They further contend that they would be entitled to seek possession of the land after the removal of the construction and arrears of the ground rent.

7. In the impugned order, the learned Judge observed that the issues in the first suit are directly and substantially the same in the second suit. However, since the respondent no.1's suit is prior in time, the learned Judge found it fit to stay the proceedings of the subsequently instituted suit.

8. A perusal of the plaint in both the suits indicates that the subject matter of both the suits and the parties are the same. Hence, no purpose would be served by keeping the subsequent suit pending. If respondent no.1 succeeds in the claim for specific performance, the same would directly affect the result of the second suit. However, the evidence that both parties would lead, would be regarding the same subject matter. Hence, it is in the interest of both parties that the suits are clubbed and tried together.

9. The stay of the subsequent suit will unnecessarily delay the proceedings in the second suit, though the subject matter of both suits is substantially the same with respect to the same property, and the issues involved in both suits are similar and interconnected. The prayers and reliefs claimed are interconnected. Both suits are pending before the Joint Civil Judge, Junior Division, Kurundwad. Hence, I see no impediment in clubbing and trying both suits together.

10. For the reasons recorded above, the writ petition is partly allowed by passing the following order :

- (i) The order dated 23rd January 2017 passed by the learned Joint Civil Judge, Junior Division, Kurundwad,

below Exhibit 13 in RCS No. 240 of 2014 is quashed and set aside.

(ii) RCS NO. 70 of 2007 and RCS No. 240 of 2014 pending before the learned Joint Civil Judge, Junior Division, Kurundwad be clubbed and tried together.

(iii) The first suit has been pending since 2007; hence, the parties shall co-operate for the early disposal of the suits, and the parties shall not be granted unnecessary adjournments.

(iv) Writ Petition is disposed of in the aforesaid terms.

[GAURI GODSE, J.]