



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4021 OF 2024

M/S. RADHA MADHAV DEVELOPERS,
A Registered Partnership Firm,
Through Authorized Representative,
Mr. Rajesh N. Agrawal,
having its office at Plot No. 667-C,
Ghat Road, Nagpur

....PETITIONER

....VERSUS....

- 1) MR. VINOD KUMAR S/O. RAJARAM
AGARWAL,**
aged about 66 years, Occ. Retired,
- 2) MR. SANKALP S/O VINOD KUMAR
AGARWAL,**
aged about 35 years, Occ.: Service,

Both R/o. 302, Marval Apartment, Jaripatka,
Nara Road, Nagpur - 440014

....RESPONDENT

Shri V.V. Bharadwaj, Advocate for petitioner
Shri Dilip Dani, Advocate for respondents

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 04/03/2025

DATE OF PRONOUNCING THE JUDGMENT: 16/04/2025

- (1) Rule.** Rule made returnable forthwith.

(2) Heard learned Counsel for both the parties.

(3) Being aggrieved by the said Order dated 27/06/2024, passed by learned 12th Joint Civil Judge Senior Division, Nagpur. The Petitioner is a partnership firm, registered under the provision of Indian Partnership Act, 1932. The Petitioner firm is represented through its authorised partner Mr. Rajesh Navranglal Agrawal, who is well aware of the facts and circumstances, which have culminated into filing of the suit bearing No. Spl. C. S. No. 1243/2022, which is a Suit for Cancellation of Agreement to Sale Dt. 18.01.2022. The Petitioner firm is engaged in the business of real estate and has developed a township named and styled as Vrindavan Township, consisting of various residential, commercial units as well as various amenities and facilities.

(4) On 18/01/2022, Registered Agreement to sale was executed between the petitioner and respondents, whereby, the respondents agreed to purchase Row House No. B1-C3, having built up area admeasuring 255.50 Sq.mt., covered in 6 bedrooms, from the petitioner and paid part payment of Rs. 15,23,334/-, out of Rs. 94,23,334/-. The respondents also paid Rs. 10,76,666/-

statutory charges such as Stamp Duty, Registration charges, GST, Electric meter Charges & Legal charges as mentioned in Paragraph Nos. 4 and 5 of the said Registered Agreement. The respondents have also agreed in paragraph No. 4 that they shall pay the balance consideration of Rs. 79,00,000/- (Rs. 94,23,334 Rs. 15,23,334), in the prescribed manner by the end of April 2022. On 16/02/2022, the respondents issued notice to petitioner, thereby, cancelling the booking of the above mentioned unit and demanded Refund of entire amount paid along with interest. On 24/02/2022, the petitioner replied by offering a choice to the respondent to either continue with the said booking of 6 BHK Unit purchased and make the timely payment of balance agreed sale consideration as agreed or to execute Registered Cancellation Deed of Agreement dated 18/01/2022 and receive a refund of Rs. 15,23,334/-. On 06/06/2022, the respondent No. 1 lodged a Consumer Complaint bearing No. CC/454/2022, before the learned District Consumer Dispute Redressal Commission, Nagpur. The petitioner filed a reply to the same and is contesting the same. On 13.10.2022, the petitioner having no other efficacious remedy filed Special Civil Suit No. 1243/2022, seeking Cancellation of Registered Agreement to sale dated 18/01/2022

and damages against the Respondents.

(5) The learned Trial Court failed to appreciate the underlying object of the Section 10 of Code of Civil Procedure, which is to prevent Courts of Concurrent Jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue, between the same parties. Each and every aspect of the above object has to be fulfilled and even if any one aspect is left out, the learned Trial Court ought not to have stayed the said suit under Section 10 of Code of Civil Procedure.

(6) In the present case, the issues involved in both the proceedings are different, in as much as in Consumer Complaint, the respondent has alleged unfair trade practice in order to seek refund and compensation. Whereas, in the Civil Suit, the petitioner has pointed out breach of contract, non-payment of balance Sale consideration for seeking Cancellation of Registered Agreement to sale dated 18.01.2022. Therefore, the issues are neither directly and substantially the same nor incidentally or collaterally the same, in both the said proceedings. On this ground also, the learned Trial Court ought to have rejected the said application

(7) Learned Counsel for the Petitioner relied on following citation:

1. *National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara, AIR 2005 SC 242*
2. *E.I.C.M. Exports Ltd. Vs. South Indian Corpn. (Agencies) Ltd., AIR 2009 SC 3127*
3. *M/S. Hindustan Motors Ltd. Vs. Amardeep Singh Wirk and ors, AIR 2009 DELHI 122*
4. *National Consumer Dispute Redressal Commission Judgment Dated 04/09/2012, Arun Khanna Vs. Smt. Shashi Sharma and others, Revision Petition No. 2321/2012*

(8) It is the contention of the respondent that the petitioner maliciously misrepresented and made false promises to the respondents that the suit property, i.e. the 4 BHK Bungalow which was shown to the respondent No. 1 can be modified into 6 BHK Bungalow. That the Petitioner is suppressing the facts of the case and trying to put the liability on the Respondents.

(9) It is also contention of the respondents that the Consumer Complaint and the Civil Suit is between the same parties and the dispute is arising of the same Agreement of Sale dated 18/01/2022. It is submitted that the Consumer Forum has already appointed the court-appointed architect for inspection of

the suit property but the petitioner has avoided to get the property inspected. It is contended that great prejudice will be caused to the respondents, if the Civil Suit is not stayed by the learned Trial Court till the decision of the Consumer Complaint. Rather, the decision in Consumer Forum would make the proceedings of civil suit infructuous.

(10) It is specifically contended by the respondent that the respondents in Prayer Clause B of the Consumer Complaint has specifically sought for refund of the consideration amount and cancellation of the Agreement of sale dated 18/01/2022. In such circumstances, the only reason petitioner is filing for the Civil Suit is to harass the respondents and cause mental agony to the respondents. The present petition is liable to be dismissed as it is baseless and stands no merits in the court of Law.

(11) Learned Counsel for respondent relied on following citations :

1. *Ethiopian Airlines Vs. Ganesh Narain Saboo*, (2011) 8 SCC 539
2. *National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara*, AIR 2005 SC 242

(12) Heard both the parties. Perused the documents and impugned order and considered the citations relied on by the parties.

(13) The petitioner in this petition has challenged the order dated 27/06/2024 passed by learned 12th Joint Civil Judge, Senior Division, Nagpur below Exh. 15 in Special Civil Suit No. 1243/2022. By this order, the suit was stayed till the decision of complaint bearing No. 454/2022 pending before the learned District Consumer Disputes Redressal Commission, Nagpur.

(14) As stated above, the respondents entered into an agreement to sell with the petitioner to purchase the Row House No. B1-C3 having built up area admeasuring 255.50 sq.mtr. from the petitioner and paid a part payment of Rs. 15,23,334/- out of Rs. 94,23,334/-. The respondents also agreed that, they shall pay the balance consideration of Rs. 79,00,000/- in the prescribed manner by the end of April, 2022. Before that, on 16/02/2022 itself, the respondents issued notice to the petitioner, thereby cancelling the booking of the

above mentioned unit and demanded refund of entire amount paid along with interest. The petitioner in reply offered a choice to the respondents to either continue with the said booking and make timely payment of balance agreed sale consideration as agreed or to execute registered Cancellation Deed of Agreement dated 18/01/2022 and receive a refund of Rs. 15,23,334/-.

(15) On 06/06/2022, the respondent no. 1 lodged a Consumer Complaint bearing No. CC/454/2022 before the learned District Consumer Dispute Redressal Commission, Nagpur. The petitioner filed a reply to the same and is contesting the same.

(16) Thereafter, the petitioner filed a Special Civil Suit bearing No. 1243/2022 seeking Cancellation of Registered Agreement to Sell dated 18/01/2022 and damages against the respondents. In the said suit, the defendants/respondents filed an application below Exh. 15 and prayed for staying of the suit. The reply was filed by the present petitioner and submitted that the defendants have filed an application under

Section 10 of the Civil Procedure Code and sought for stay to the present suit. Section 10 of C.P.C. would apply only when the matter in issue in the instant suit, should be directly and substantially in issue in previously instituted suit between the same parties, in the same Court or any other Court having jurisdiction to grant relief claimed and having like jurisdiction. The suit has filed for Cancellation of Agreement to Sell dated 18/01/2022, by adjusting the refund of sale consideration with the amount receivable from the defendants in respect of the suit property. He is claiming damages, payment towards delayed interest towards agreed 20% deduction of sale consideration for cancellation of booking and litigation expenses whereas the respondents have filed a Consumer Complaint seeking for recovery of sale consideration and damages from the plaintiff.

(17) The learned 12th Jt. Civil Judge, Senior Division, Nagpur without considering the different jurisdiction to the Civil Court and District Consumer Disputes Redressal Commission held that the complaint before the District

Consumer Disputes Redressal Commission, Nagpur is filed prior to the suit. The basis of both the cases and the nature of dispute is same and held that, it appears that the matter in issue in both cases is same.

(18) The learned Civil Judge, Senior Division, Nagpur also further observed that the issues arising in both cases and reliefs sought are overlapping and to avoid complications, he stayed the suit under Section 10 of C.P.C. till decision of the complaint bearing No. 454/2022. While passing this order, the learned Civil Judge, Senior Division, Nagpur failed to consider that the jurisdiction of both the Courts are different. The petitioner cannot file any complaint before the learned District Consumer Disputes Redressal Commission and there is no right to file complaint or counter claim in consumer case. The petitioner filed civil suit for Cancellation of Agreement to Sell dated 18/01/2022. Such relief, the Consumer Court cannot grant. Moreover, the Consumer Act provides that the provisions of the Act shall be in addition and not in derogation of the provisions of any other law for the time

being in force.

(19) The learned counsel for the petitioner relied on *M/s. Hindustan Motors Ltd.* (supra) wherein Delhi High Court held that, it would be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. On the question of jurisdiction, it is stated that the forums under the Act have jurisdiction to entertain a complaint despite the fact that other forums/Courts would also have jurisdiction to adjudicate upon the lis.

(20) The learned counsel for the petitioner placed reliance on *National Institute of Mental Health and Neuro Sciences* (supra) wherein the Hon'ble Apex Court held in para 8 as under:-

“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 contradistinction 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."

(21) The learned counsel for the petitioner also relied on *E.I.C.M.. Exports Ltd.* (supra), however, the said decision is overruled in the case of *Ethiopian Airlines* (supra).

(22) In view of this settled position, Section 10 of C.P.C. is referable to a suit instituted in a civil Court. The proceedings before the District Consumer Disputes Redressal Commission cannot be equated with the proceedings before the civil Court. They are not the Courts of concurrent jurisdiction. The whole of subject matters in both proceedings cannot be said to be identical. Though the parties are same, the relief claim is different. The relief claimed by the plaintiff cannot be granted by the Consumer Court. As such, the impugned order is patently erroneous, illegal and liable to be set aside. Accordingly, I proceed to pass the following order:-

ORDER

1) The Writ Petition is **allowed**.

2) The order dated 27/06/2024 below Exh. 15 in Special Civil Suit No. 1243/2024 passed by learned 12th Joint Civil Judge, Senior Division, Nagpur is hereby quashed and set aside.

3) The learned 12th Civil Judge, Senior Division, Nagpur is hereby directed to proceed with the suit.

The petition stands **disposed of** in above terms.

(Smt. M.S.Jawalkar, J.)

B.T.Khapecar