

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1683 OF 2025

Deepak Natwarlal Mehta

...Petitioner

**Versus**

Azad Natwarlal Mehta

...Respondent

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**Mr. Vikas Pandey** a/w. *Mahavir Deshlahra and Pritesh Parmar i/b MD Legal LLP, for Petitioner.*

**Mr. Sagar Sheth** i/b *Tithi Tataria, for Respondent.*

CORAM: MADHAV J. JAMDAR, J.

DATE: 09 FEBRUARY 2026

**P.C.:**

1. Heard Mr. Pandey, learned Counsel appearing for the Petitioner and Mr. Sheth, learned Counsel appearing for the Respondent.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the order dated 19<sup>th</sup> October 2024 passed below Exhibit-22 in L.E. Suit No.69 of 2021 by the learned Judge, Court Room No.12, Court of Small Causes at Mumbai ("**impugned Order**"). The said application bearing Exhibit-22 has been filed under Section 10 of the *Code of Civil Procedure, 1908* ("**Code**"), seeking stay of the proceedings being Suit No.69 of 2021 till the final hearing and disposal of S.C. Suit No.2904 of

2019 filed by the Petitioner pending before the City Civil Court, Mumbai. By the impugned Order, the said application has been dismissed.

**3.** It is the submission of Mr. Pandey, learned Counsel appearing for the Petitioner that if the suit filed by the Petitioner is decreed, it will operate as *res judicata*. Learned Counsel further submits that the parameters of Section 10 of the Code are applicable, and therefore, it is necessary to stay the Small Causes Court suit till the disposal of the City Civil Court suit. He relies on Judgment of Delhi High Court in the case of *Filo Interior Decorations Pvt. Ltd. v. L.K. Modi & Ors.*<sup>1</sup>. He also relies on Judgment of the Supreme Court in the case of *Gupte Cardiac Care Centre and Hospital v. Olympic Pharma Care (P) Ltd.*<sup>2</sup> as also decision of a learned Single Judge in *Padmabai W/o Bhaurao Patil v. Shaikh Shahadulla SK. Abdulla & Anr.*<sup>3</sup>.

**4.** On the other hand, it is the submission of Mr. Sheth, learned Counsel appearing for the Respondent that subject matter of both these suits are totally different and therefore, principle of *res judicata* will have no application. In support of said contention, learned Counsel relies on Judgment of the Supreme Court in the case of *Aspi Jal and Anr. v.*

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12012 SCC OnLine Del 2364  
2 (2004) 6 SCC 756  
3 2010(7) Mh. L.J. 98

*Khushroo Rustom Dadyburjor*<sup>4</sup>.

5. The Petitioner and the Respondent are real brothers. It is the claim of the present Petitioner that both of them with their other brothers were jointly carrying a family business in the name and style of “*Mehta Engineers and Fabricators*”, a partnership firm. In view of the services rendered by the said firm, the Developer, after making certain adjustments in the consideration amount and after taking some on account payments from the Defendant No.1, sold and transferred the ownership right of the Suit Flat No.A/35 (“**suit flat**”) to the Defendant No.1, i.e., the present Respondent. It is the contention that since the relations were cordial and mutual with the siblings then, the Petitioner and the other brothers did not object to the said flat being transferred in the name of the Respondent, although, the other brothers had contributed for purchase of the said flat in lieu of the services of fabrication done by the firm which included the consideration advanced on behalf of the present Petitioner.

6. By taking the above and other contentions, a suit has been filed in City Civil Court being S.C. Suit No.2904 of 2019, seeking relief that it be declared that the Petitioner will be entitled to the specific performance

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4 (2013) 4 SCC 333

of the oral Family Settlement as well as the subsequent oral Agreement between the Petitioner and the Defendant No.1 in respect of sale of the suit flat and that the Respondent be directed by a mandatory order to execute the Sale Deed in favour of the Plaintiff in respect of the suit flat and also be restrained from creating any third party rights in respect of the suit flat.

**7.** Thereafter, subsequently, the Respondent filed a suit in the Small Causes Court of Mumbai being L.E. Suit No.69 of 2021 by contending that the Respondent had purchased the suit premises in the building known as “Highway Apartment” of the Hind Co-operative Housing Society Limited in the year 1977 and in the year 1982, for better opportunities, the Respondent along with his family, decided to shift to the United States of America. In the year, 1987, the Petitioner was suffering from financial difficulties and he was in need of a place to reside along with his family and being an elder brother and on humanitarian grounds, the suit flat was given to the Respondent to reside as a gratuitous licensee. As the Petitioner has not vacated the premises, the suit has been filed for eviction.

**8.** In view of the above factual aspects, it is necessary to set out Section 10 of the Code, which 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 <sup>1</sup>[India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of <sup>1</sup>[India] established or continued by <sup>2</sup>[the Central Government <sup>3</sup>\*\*\*.] and having like jurisdiction, or before <sup>4</sup>[the Supreme Court].***

*Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in <sup>1</sup>[India] from trying a suit founded on the same cause of action.”*

(Emphasis added)

Thus, Section 10 of the Code provides that 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 *inter alia* between the same parties where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed.

**9.** In this particular case, Small Causes Court has exclusive jurisdiction to decide the suit between licensor and licensee under Section 41 of the *Presidency Small Cause Courts Act, 1882*. As the Small Causes Court has got exclusive jurisdiction to decide the said suit, the City Civil Court had no jurisdiction to decide the suit which has been

filed in the Small Causes Court. In fact, the Small Causes Court also will have no jurisdiction to decide the suit which has been filed in the City Civil Court. Thus, it cannot be said that the issues are directly and substantially are the same and they are litigating under the same title. As far as, the suit which has been filed in the City Civil Court is concerned, it is a suit between the purchaser and the seller and as far as the suit which has been filed in the Small Causes Court, it is the suit between the licensor and the licensee. In any case, the City Civil Court has no jurisdiction to deal with the suit which has been filed in the Small Causes Court, and therefore, one of the important criteria of Section 10 of the Code that the earlier court should have jurisdiction to grant the relief claimed in the subsequent suit is not fulfilled.

**10.** Learned Counsel for the Petitioner has relied on the Judgment of Delhi High Court in the case of *Filo Interior Decorations Pvt. Ltd.* (supra). However, in the said case, the Plaintiff in a previous suit filed in the Bombay High Court claimed a money decree towards consideration not paid regarding the transaction for supply of furniture and of interior decoration. In the later suit, which has been filed before the Delhi High Court, damages to the tune of Rs.15,00,000/- were sought by contending that the Plaintiff in Delhi High Court suit did not perform the

contract in the terms agreed upon and due to defective work, they suffered losses. Thus, in those circumstances, the Delhi High Court stayed Delhi suit till the pendency of the Bombay High Court suit. However, the controversy in that case is totally different than the present case. Section 10 squarely applies in the facts and circumstances of that case as the Bombay High Court has jurisdiction to consider relief claimed in the subsequent Delhi suit.

**11.** Learned Counsel for the Petitioner also relied on the another Judgment of the Supreme Court in *Gupte Cardiac Care Centre and Hospital* (supra). The factual position in that case is set out in Paragraph Nos.1, 2 and 3, which read as under:

*“Gupte Cardiac Care Centre and Hospital (hereinafter ‘the Hospital’ for short) representing Healing Touch Angiography and Cardiac Surgery Centre Pvt. Ltd., both situated at Nashik, has filed Special Civil Suit No. 62 of 2002 in the Court of Civil Judge at Nashik on 20-12-2001. The defendants impleaded therein are M/s Jostra Medizintechnik AG and Olympic Pharma Care Pvt. Ltd. situated respectively in Germany and Delhi (hereinafter referred to as ‘manufacturer’ and ‘dealer’ for short).*

**2.** *Olympic Pharma Care Pvt. Ltd., New Delhi has filed a suit against the Hospital in the High Court of Delhi (original side) on 10-1-2002, which is registered as Suit No. 190 of 2002.*

**3.** *It appears that the Hospital needed a heart-lung machine along with accessories manufactured by the German Company (the manufacturer) and marketed by*

*the 'dealer' in India. The machine was delivered and installed. Disputes arose as the performance of the machine was not found to be satisfactory. There was correspondence and notices exchanged and then suits filed. The suit filed by the 'Hospital' at Nashik is for recovery of Rs 28,35,000. The plaintiffs therein have claimed the return of the advance paid, compensation equivalent to the additional amount spent by them for purchasing another machine and the interest on the said two sums. The suit instituted by the 'dealer' at Delhi is for recovery of Rs 20,00,000 alleged to be outstanding by way of balance price of the machine and interest thereon. TP (C) No. 400 of 2003 has been filed by the Hospital seeking transfer of the suit at Delhi to Nashik while TP (C) No. 248 of 2004 has been filed by the 'dealer' seeking transfer of the suit at Nashik to Delhi."*

**12.** Thus, in that case also, the dispute arose as the performance of the machine provided by Olympic Pharma Care Pvt. Ltd was not found to be satisfactory. Therefore, the suit was filed by Gupte Cardiac Care Centre at Nashik for recovery of Rs.28,35,000/-. The suit filed in the Delhi Court is for recovery of Rs.20,00,000/- alleged to be outstanding by way of balance price of the machine, and therefore, the Delhi suit was filed. In those circumstances, the Supreme Court transferred the Delhi suit to Nashik Court.

**13.** As far as the Judgment on which the learned Counsel for the Respondent has relied in the case of *Aspi Jal* (supra), in that case, three suits were filed in the Small Causes Court seeking eviction. However, the



Small Causes Court has held that the criteria of Section 10 of the Code that the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties observed that the suits were filed on the ground of non-user and period of non-user was different, and therefore, although the ground of eviction in the two suits was similar, the same were based on different causes of action, and therefore, it has been observed that the provisions of Section 10 of the Code is not attracted in the facts and circumstances of said suits.

**14.** As observed earlier in this case, the controversy is totally different. As already discussed herein above, Section 10 of the Code will have no application and the Small Causes Court suit cannot be stayed in view of pendency of earlier City Civil Court. Accordingly, no interference in the impugned Order is warranted.

**15.** Accordingly, no interference in the impugned Order is warranted. The Writ Petition is *dismissed*.

[ MADHAV J. JAMDAR, J.]