



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

WRIT PETITION NO. 2405 OF 2025

Arvind Prabhakar Deshpande, Age-66 years, Occ-Retired,
R/o Kulswamini Apartment, Station Road, Ramdas Peth,
Akola Tq. & Dist. Akola.

PETITIONER

VERSUS

1. Ijhar Israil Diwan, Aged 34 years, Occ. Business,
R/o Jathar Peth, Akola, Tq. & Distt. Akola.
2. Arshad Israil Diwan, aged 30 years, Occ. Business,
R/o Jathar Peth, Akola, Tq. & Distt. Akola.
3. Israil Ibrahim Diwan, Aged 62 years, Occ. Business,
R/o Jathar Peth, Akola, Tq. Distt. Akola.

RESPONDENTS

Shri V.R. Deshpande, counsel for the petitioner.
Shri S.O. Ahmed, counsel for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : JANUARY 20, 2026

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. The petitioner takes exception to the order dated 21.01.2025 passed by the trial Court allowing the application at Exhibit 16 under Section 10 of the Code of Civil Procedure, 1908 (for short, 'the Code') and directing stay of the suit till the decision in Regular Civil Appeal No.90 of 2023.

3. The petitioner is the original plaintiff in Special Civil Suit No.176 of 2023. The respondents filed an application under Section 10 of the Code

for stay of the said suit till decision in Regular Civil Appeal No.90 of 2023 by contending that the previously instituted suit for specific performance of contract with respect to the same suit property was already decided and since the appeal is pending, the suit be stayed. This application is allowed by the order dated 21.01.2025 which is subjected to challenge by way of instant petition.

4. The primary contention canvassed by the counsel for the petitioner is that the cause of action and the reliefs claimed in the two suits are different and therefore the application under Section 10 of the Code deserved to be rejected. In support of his submissions, he relied upon the judgment in *Aspi Jal & Another Versus Khushroo Rustom Dadyburjor* [(2013) 4 SCC 333] which deals with the position of law about scope of Section 10 of the Code.

5. The counsel for the respondents opposed the petition by contending that the previously instituted suit with respect to the same suit property between the same parties is already decided and the appeal arising out of it is still pending and hence the Special Civil Suit No.176 of 2023 was required to be stayed till decision of the Regular Civil Appeal.

6. A perusal of the impugned order shows that the trial Court has given due consideration to the controversy involved in the two suits and having found that the subject matter of the previously instituted suit is part of the subject matter of the instant suit, in between the same parties, ordered stay of the suit till decision of the Regular Civil Appeal.

7. It has to be noted that the previously instituted Regular Civil Suit No.301 of 2012 was for specific performance of contract in respect of the property i.e. 1550 square feet in between the same parties. Further, the subject matter of the suit in question was part of the subject matter in Regular Civil Suit No.301 of 2012. During pendency of that suit, out of the area admeasuring 1550 square feet, an area of 1050 square feet was sold by two brothers of plaintiff (Plaintiff in Special Civil Suit No.176 of 2023) to the defendant nos.1 and 2 vide registered sale-deed and the suit continued in respect of only that much area which is the subject matter of the subsequent suit. It has to be noted that the earlier suit came to be dismissed and an appeal came to be preferred which is pending. As such, the decree passed in Regular Civil Suit No.301 of 2012 has not attained finality. Thus, it is clear that the issue in the subsequent suit is directly and substantially an issue in the previously instituted suit with respect to which the appeal is pending and there is possibility of conflicting decisions. As such, the reasons recorded by the trial Court while allowing the application appear to be sound. The position of law laid down by the Hon'ble Supreme Court in *Aspi Jal & Another* (supra) is not disputed however, the controversy involved in the application for stay in the instant matter was required to be decided on the basis of factual aspects involved in the two suits. As regards the factual aspects, the issue involved in subsequent suit is directly and substantially an issue in the previous suit and the trial Court has properly considered this vital aspect while deciding the application at Exhibit 16 by the order dated 21.01.2025.

8. Having regard to the factual and legal aspects referred above, no indulgence is warranted with the impugned order in exercise of Article 227 of the Constitution of India. The writ petition deserves to be dismissed and the same is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE