

(1972) 04 MP CK 0006
In the Madhya Pradesh High Court
Case No : C. Revision No. 562 of 1971

A.C. Naha Roy

APPELLANT

Vs

National Coal Development Corporation, Ltd. and others

RESPONDENT

Date of Decision : 19-04-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (1972) JLJ 831

Hon'ble Judges : Bishambhar Dayal, C.J.; Shiv Dayal Shrivastava, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; Y.S. Dharmadhikari Applicant No. 1, for the Respondent

Final Decision : Allowed

Judgement

B. Dayal, C.J.—This revision has been referred to a Division Bench by a learned Single Judge of this Court. The question that arises for decision was whether the subsequently instituted suit could be stayed u/s 10 of the Code of Civil Procedure. The facts on which this matter has to be decided are as follows. The plaintiff (petitioner here) filed a suit No. 5-B of 1969 in the Court of the Additional District Judge, Ambikapur, on 13th March 1969. In this suit, he claimed a decree for Rs. 56,000/- on account of having constructed 14 isolation stoppings on the basis of an oral order for construction. He subsequently filed another suit No. 2-B of 1970 in the Court of the Civil Judge. Class I, Ambikapur for recovery of Rs. 6,577.13 as balance of the amount due for having constructed 25 ventilation stoppings on the basis of a written work order dated 6th September 1963.

2. The defence filed in the previously instituted suit before the Additional District Judge was that 14 isolation stoppings had been constructed by the plaintiff, that the order for the construction was not a separate oral order, but the same original written order dated 6th September 1963 was subsequently orally amended during execution by reducing the number of ventilation stoppings from

25 to II and instead adding 14 isolation stoppings, and that the whole charges for the construction of 14 isolation stoppings had been paid off. In the subsequent suit, the defendants absolutely denied that the plaintiff had constructed 25 ventilation stoppings on the basis of the work order mentioned by the plaintiff and also contended that it was on the subsequently altered order that 11 ventilation stoppings only had been constructed.

3. The defendants made an application for staying the subsequent suit. The trial Court stayed the suit on the view that section 10 of the Code applied as there were common issues in both the suits. Against that order, the plaintiff filed this revision. The learned Single Judge, without going into the facts of the case, has referred it to a Division Bench of this Court on the ground that there was an apparent conflict of views between the two decisions of this Court.

4. We have heard Learned Counsel for both the parties and we are satisfied that, upon the facts of the two suits filed by the plaintiff in the Courts below as stated above, there is no scope for the application of the provisions of section 10 of the Code, as the language of that section indicates that its provisions can only apply where the subject matter of the subsequent suit is directly and substantially involved in the previously instituted suit and it is only then that the subsequent suit is to be stayed. The idea is that as soon as the previously instituted suit is decided, the subsequent suit will practically stand disposed of as its conclusions would operate as *res judicata* and, therefore, in such a case only the subsequent suit ought to be stayed u/s 10 of the Code. In each case, therefore, the matter has to be looked at from this point of view. Learned Counsel for the non-applicant relied upon the head note (in the AIR) in AIR 1948 297 (Nagpur) , which is as follows :

"Where the issue involved in a subsequently instituted suit is covered by one of the issues in the previously instituted suit, appeal in which is pending, the subsequently instituted suit should be stayed until the decision of the appeal in the previously instituted suit."

This head-note is misleading. In paragraph 6 of the judgment, the learned Judge came to the conclusion. "It is obvious that the subject matter of the civil suit 2 B of 1946 is covered completely by civil suit 6-B of 1943 but the lower Court somehow misapprehended the correct position.....". This case, therefore, lays down the correct basic principle for the application of section 10 of the Code. In the present case, the subject matter of the two suits is entirely different. The previously instituted suit related to the construction of 14 isolation stoppings and the payment thereof. The subsequent suit relates to the construction of 25 ventilation stoppings and the claim made was for recovery of Rs. 6,577.13 as balance due for such construction. Thus the subject-matter of the two suits was entirely different. It may be that on account of the defence taken by the defendants, there may be one issue common in the two suits, but that was not enough to attract the provisions of section 10 of the Code. The observation of the learned Single Judge that there was a conflict of opinion between the two cases

cited by him in his order does not appear to be right. We have looked into the facts of those cases which are entirely different from each other on facts and it cannot be said that the decision of one case conflicts with the decision given above or with one another. The language of each case has to be read in the light of its facts.

5. We, therefore, allow this revision, set aside the order of the trial Court and direct that Court to proceed with the trial of the suit according to law. Parties shall bear their own costs.