

(2023) 12 CAL CK 0077
In the Calcutta High Court
Case No : C.O. No. 1717 Of 2023

Ananda Mohan Roy

APPELLANT

Vs

Kanchana Mukhopadhyay

RESPONDENT

Date of Decision : 21-12-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 10, 151
Code Of Criminal Procedure, 1973 — Section 138

Citation : (2023) 12 CAL CK 0077

Hon'ble Judges : Biswaroop Chowdhury, J

Bench : Single Bench

Advocate : Sibasis Ghosh, Biswabrata Baso Mallick, Dwarik Nath Mukherjee, Deb Kumar Deashi, Chayan Gupta, Saptarshi Mal, Kaushik De, Mohini Majumder

Final Decision : Dismissed

Judgement

Biswaroop Chowdhury, J

1. The petitioner before this Court is a defendant in a money suit and is aggrieved by the order dated 28.04.2023 passed by the Learned Judge Bench-V City Civil Court, Calcutta in Money Suit No.723 of 2012 rejecting an application under Section 10 of the Code of Civil Procedure. The case of the petitioner in the Learned Court below may be summed up thus:-

1. The opposite party filed a suit against the petitioner praying for recovery of Rs.9,46,000/- along with interest @ 15% p.a till realization, and for interest @ 15% p.a from the date of institution of the said suit till passing of the decree, the decree to carry interest at the aforesaid date till realization, costs of the suit including Advocate's fees.

2. The petitioner is duly contesting the suit by filing written statement.

3. The petitioner filed an application under Section 10 read with Section 151 of the Code of Civil Procedure praying for stay of the suit on the ground that the issues involved in a complaint case instituted by the plaintiff and those involved

in the suit are directly and substantially the same.

4. The opposite party contested the application under Section 10 of Code of Civil Procedure by filing written objection.

5. The Learned Trial Court by order date April 28, 2023 was pleased to reject the application under Section 10 of the Code of Civil Procedure with costs of Rs.5000/-.

The petitioner being aggrieved by the order of the Learned Trial Court has come up with the instant application.

It is the contention of the petitioner that the Learned Judge has failed to exercise jurisdiction vested by law. It is further contended that, the Learned Judge has failed to appreciate that in the complaint case and in the said suit the issues involved are directly and substantially the same and identical. It is also contended that the Learned Judge has failed to appreciate that rejecting the said application would tantamount to multiplicity of judicial proceeding.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite parties. Perused the petition filed and materials on record.

Learned Advocate for the opposite party submits that there is no error in the order passed by the Learned Court below Learned Advocate further submits that provisions under Section 10 of the Code of Civil Procedure is applicable with regard to suits and not criminal complaints. Learned Advocate relies upon the following judicial decisions:-

Vishnu Dutt Sharma vs. Daya Sapa (SMT) reported in (2009) 13 SCC 729.

Learned Advocate for the petitioner submits that the issue involved in the suit and that involved in the complaint under Section 138 Cr.P.C are the same, thus the suit should be stayed. Learned Advocate further submits that his client made endeavour to settle the matter but the opposite party refused to do. Learned Advocate also submits that his client is still ready and willing to settle the dispute.

In order to consider the validity of the order dated 28.04.2023 passed by the Learned Trial Court it is necessary to consider the provision contained in Section 10 of the Code of Civil Procedure and the judicial decision relied upon:

Section 10 of the Code of Civil Procedure provides as follows:

S.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 India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction or before the Supreme Court.

Explanation.--The pendency of a suit in a foreign Court does not preclude the

Courts in India from trying a suit founded on the same cause of action.

Thus upon the reading the provision contained in Section 10 CPC it will appear that the said section deals with the procedure to be followed when a suit is instituted irrespective of pendency of previously instituted suit between the same parties where the matter is directly and substantially in issue. Hence the provision contains the nomenclature suit and not other proceedings whether civil or criminal. It further provides that the Court where the previous suit is instituted is required to have jurisdiction to grant the relief claimed.

In the case of GSRTC vs. Vimlaben reported in AIR 1995 Guj. 220 the Hon'ble Court held that Section 10 C.P.C applies to suits instituted in civil court, and does not apply to proceedings of other nature instituted under special statute. Again in the case of Kanhaiyalal vs. Draupadi reported in AIR 1992 MP 88 the Hon'ble Court held that stay of a later suit until decision in earlier suit is a mere rule of procedure. It confers no legal right on any party.

In the case of Vishnu Dutt Sharma (supra) the Hon'ble Supreme Court observed as follows:-

"8. There cannot be any doubt or dispute that a creditor can maintain a civil and criminal proceeding at the same time. Both the proceeding, thus, can run parallel. The fact required to be proved for obtaining a decree in the civil suit and a judgment of conviction in the criminal proceedings may be overlapping but the standard of proof in a criminal case vis-a-vis a civil suit, indisputably is different. Whereas in a criminal case the prosecution is bound to prove the commission of the offence on the part of the accused beyond any reasonable doubt, in a civil suit "preponderance of probability" would serve the purpose for obtaining a decree."

In the case of P. Swaroopa Rani vs. M. Hari Narayana reported in AIR 2008 SC 1884 the Hon'ble Supreme Court observed as follows:-

"11. It is however well settled that in a given case civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case."

Thus upon considering the provisions contained in Section 10 of the Code of Civil Procedure and the relevant judicial decisions it is clear that both civil and criminal proceedings can proceed simultaneously. Although the Court has inherent power to stay suit under Section 151 of the Code of Civil Procedure to prevent abuse of the process of law but the petitioner/defendant has not been able to show that continuation of the money suit inspite of pendency of complaint under Section 138 Cr.P.C is abuse of the process of law, neither the defendant/petitioner has been able to show that the plaintiff has obtained the relief in the complaint case or that there are settlement proceedings in the said case. Hence upon hearing the Learned Advocates and considering the facts of the case this Court is of the

view that there is no error in the order dated 28.04.2023 passed by Learned Judge Bench-V City Civil Court, Calcutta in Money Suit No.723 of 2012. Thus this application should be dismissed.

Hence it is ordered that this Revisional Application stands dismissed. Order dated 28.04.2023 passed by Learned Judge Bench-V City Civil Court, Calcutta in Money Suit No.723 of 2012 except costs imposed is affirmed.

In the interest of Justice costs awarded amounting to Rs.5000/- is hereby set aside. It is however made clear that this Court has not gone into the merit of the case and all the points are left open. It is further clarified that in the event parties intend to settle the dispute necessary petition may be filed before Learned Court below, in accordance with law.