
(2025) 05 CAL CK 0810

In the Calcutta High Court, Original Side

Case No : IA GA No.3 Of 2022 In CS com 323 Of 2024 (Old No. CS 223 Of 2021)

M/s Consolidated Infracon Private Limited

APPELLANT

Vs

Lakshman Prasad Agarwal

RESPONDENT

Date of Decision : 21-05-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 10, 88, Order 35 Rule 3
Indian Penal Code, 1860 — Section 406, 409, 420
Negotiable Instruments Act, 1881 — Section 138

Citation : (2025) 05 CAL CK 0810

Hon'ble Judges : Arindam Mukherjee, J

Bench : Single Bench

Advocate : Kumarjit Banerjee, Sanchari Chakraborty, Sourojit Dasgupta, Akansha Chowdhury, Chayan Gupta, Anujit Mookherji, Rittick Chowdhury

Final Decision : Dismissed

Judgement

Arindam Mukherjee, J

1. This is an application under Section 10 of the Code of Civil Procedure, 1908 (in short 'CPC') filed by the sole defendant, inter alia, for stay of all further proceedings in the above suit on the ground that the defendant has filed a prior suit before the City Civil Court at Calcutta, wherein the plaintiff is the defendant No. 25 and decision in the prior suit the plaintiff herein.

2. The defendant says that on 31st August, 2019, the defendant had filed an interpleader suit being TS No. 1239 of 2019 before the Learned City Civil Court at Calcutta which is now pending before the Learned City Civil Court at Calcutta, which is now pending before the Learned 12th Bench of the said Court. The plaintiff herein has been impleaded as defendant No. 25 in the said suit. The plaintiff has instituted this suit on or about 8th October, 2021. The plaintiff on 6th February, 2022 had entered appearance of the said suit.

3. The defendant further says that on a plain reading of the plaint filed in TS

1239 of 2019 and that filed in the instant suit (C.S. 223 of 2021), it will appear that the identical issues will arise between the parties to this suit in the City Civil Court and as such the proceedings in this suit are required to be stayed being a subsequent suit giving rise to identical and/or substantially common issues.

4. The defendant also says that the case made out by the plaintiff in this suit will be plaintiff's defence as defendant No. 25 in the suit before the City Civil Court at Calcutta. The defendant further says that the suit instituted before the City Civil court is interpleader suit wherein a relief has been claimed for a decree against the defendant No. 150 for such amount as may be found due and payable in favour of the defendant Nos. 1 to 49 therein which includes the plaintiff herein as defendant No. 25 in the suit before the City Civil Court. The decree which the plaintiff is claiming in the suit will be available as defendant No. 25 in the said interpleader suit on a decree being passed against defendant No.150.

5. The defendant has mainly relied upon the following judgements:-

I) AIR 1993 Mad 90 (Radhika Konel Parekh Vs. Konel Parekh)

II) AIR 1962 SC 527 (Manohar Lal Chopra Vs. Seth Hiralal)

Referring to the aforesaid judgments, the defendant says that the instant case is a fit case wherein all proceedings in C.S. 223 of 2021 are pending before the City Civil Court at Calcutta.

6. The plaintiff, on the other hand, has alleged that the application for stay of proceedings in C.S. 223 of 2021, inter alia, under Section 10 of CPC filed by the sole defendant is misconceived and mala fide.

7. On being approached by the defendants, who is engaged in the business of dry fruits, dates, pulses and spices, the plaintiff gave a temporary accommodation loan of Rs.50,00,000/- repayable within the period of 61 days with interest at the rate of 9% per annum. The plaintiff transferred in four tranches starting from 28th March, 2018 and ending on 31st March, 2018 (both days inclusive), the aggregate sum of Rs.50 lakhs through Real Time Gross Settlement (in short RTGS) from its banker Punjab and Sind Bank to the defendant, the defendant acknowledged receipt of the said sum and appropriate the money so lend out by the plaintiff. The repayment period was, however, extended on mutual agreement vide a letter dated 1st June, 2018 by which the period of loan was extended for 124 days till the month of October, 2018. The defendant issued a post-dated cheque drawn on his banker Yes Bank limited at Kali Krishna Tagore Street Kolkata – 700017. The said cheque dated 3rd October, 2018 on being presented for encashment on 6th December, 2018 with due intimation to the defendant was dishonoured with the endorsement "drawer's signature differs". Despite being requested the defendant did not replace the cheque or made payment of the loan amount with interest as a consequence whereof, the plaintiff issued a demand notice dated 31st December, 2018 which is duly received by the defendant on 1st January, 2019. This was followed by

initiation of a proceedings under Section 138 of the Negotiable Instruments Act, 1881. The defendant contemplating an action from the plaintiff had instituted an interpleader suit before the City Civil Court at Calcutta by impleading the plaintiff as a defendant therein on untrue and incorrect allegation. There is no privity of contract between the plaintiff and the defendant No.150 in the City Civil Court Suit and as such the plaintiff has no nexus with the alleged claim of the defendant (in the suit) against the said defendant No. 150 in the City Civil Court Suit. The issues which will fall for consideration in the suit are not even common far less identical to the issues that may fall for consideration in the City Civil Court Suit.

8. The defendant is habitual defaulter as a consequence whereof the plaintiff had lodged a complaint with Jorashako Police Station, Calcutta as a First Information Report (in short 'FIR') being Jorashako P.S./DD/Case No. 21 of 2021 dated 2nd February, 2021. The charges in the said criminal complaint were under Section 406/409/420 of the Indian Penal Code, 1860 (in short 'IPC'). The plaintiff says that the suit before the City Civil Court is not against the plaintiff only but there are 150 defendants. The said suit has been filed by the defendant with an oblique motive to defraud creditors including the plaintiff to whom the defendant owes money. The suit before City Civil Court is an abuse of process. The issues that will arise at the trial of the two suits cannot be said to be identical or substantially common for which the proceedings in the instant suit is required to be stayed. The provisions of Section 10 of CPC are not attracted in the instant case. The defendants after realizing there has been admission or its part with regard to the plaintiff's claim, if possible. The plaintiff has relied upon few judgments, but those are on the point of admission of liability/debt.

9. The judgments cited by the defendant are essentially on the principle of Section 10 of CPC. There is no dispute as the proposition of law laid down therein. The ratio is to be applied after a meaningful reality of the two plains.

10. The defendant's suit before the City Civil Court is an interpleader suit. An interpleader suit is defined in Section 88 of CPC which is as follows:-

"88: Where interpleader suit may be instituted.— Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself:

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

11. In case of an interpleader suit two persons have to claim adversely against the said debt against each other from another person and the said other person

claims no interest except cast etc., and is ready and willing to deliver the same to a rightful claimant can file an interpleader suit. On a plain reading of the plaint in T.S. 1239 of 2019 under Section 88 of CPC. Thus the plaintiff in this suit and the defendant No. 150 in the City Civil Court Suit should be the two persons claiming adversely in respect of the same claim. The defendant averment in the plaint filed in T.S. 1232 of 2019, however, without any ambiguity says that the defendant No. 150 therein owes many to the defendant (plaintiff in the City Civil Court Suit) for unpaid price of goods sold and delivered. On the other hand it is stated that through broker, the defendant had availed financial assistance or investments from the plaintiff (defendant No. 25 in City Civil Court Suit). The plaintiff herein is claiming many which the defendant herein is entitled to receive from the defendant No. 150 (in the City Civil Court Suit).

12. In the plaint filed in the instant suit the plaintiff has stated that it had lent and advanced money to the defendant which is repayable with interest after a certain period. The defendant issued a cheque in acknowledgement of debt/liability which on being presented was dishonoured. The defendant did not pay the money as a consequence whereof the suit has been instituted for recovery of debt.

13. The main issue which will, therefore, fall for consideration in TS 1239 of 2019 is whether the defendant in this suit being the plaintiff in that suit is entitled to get any money from defendant no. 150 in TS 1239 of 2019. On the other hand, in this suit the issue will be whether the plaintiff is entitled to realise the money said to have been lent and advanced by the plaintiff to the defendant. On a plain reading of the plaint in TS 1239 of 2019, it is clear that the defendant availed financial assistance from the plaintiff herein either as loan or by way of investment. The issues, therefore, will be different in the two suits. The plaint filed in this suit, therefore, cannot be said to be the only defence of defendant no. 25 in TS 1239 of 2019.

14. On a meaningful reading of the plant filed in TS 1239 of 2019 and that in CS 223 of 2021 it is apparent that the defendant needed financial assistance and as such availed the sum from defendants no. 1 to 149. The defendant had supplied dry fruits, dates etc., to the defendant no. 150 against which it has received a sum of Rs. 664320/- and at the time of filing of suit was to receive Rs.267516950 from the defendant no. 150 The defendant has not claimed the said sum of Rs. 267816590/- as pleaded in paragraph 6 of the plaint in TS 1239 of 2019 against the defendant no. 150 therein but has prayed for a decree for such amount as may be found due and payable in favour of the defendant nos. 1 to 149. No agreement is, however, pleaded in the plaint to which the plaintiff herein is a party which the defendant no. 150 in the suit before the City Civil Court was to pay to the plaintiff herein. Being the defendant no. 25 in the said suit the loan amount from out of dues allegedly recoverable from defendant no. 150 in absence of any specific agreement wherein the plaintiff has agreed to receive the money from the defendant no. 150 towards repayment of the

defendant's loan amount, there is no compulsion for the plaintiff herein to wait for an adjudication of money if any payable by the defendant no. 150 in the suit before the City Civil Court at Calcutta for realizing the plaintiff's claim. It also appears that the suit before the City Civil Court has also been filed for cancellation of documents without specifying the documents and injunction though it is with the nomenclature "interpleader suit". The said suit has been valued at Rs. 300/-. It further appears that a sum of Rs.267616950/- is allegedly due from the defendant no. 150. There is also no pleading in the plaint filed in the suit before the City Civil Court that the plaintiff herein has received any payment from the defendant no. 150 in the suit before the City Civil Court at Calcutta before institution thereof. These aspects will, however fall for consideration before the City Civil Court wherein the suit is pending.

15. In the light of the discussion as aforesaid the ratio laid down in the said two judgments cited by the plaintiff are concerned the same as observed hereinabove are on the ground of admission which has no applicability while adjudicating an application under Section 10 of CPC and as such are not relevant. Thus the tests laid down to be conducted while adjudicating an application under Section 10 of CPC are fulfilled all proceedings in the instant suit shall be stayed till the disposal of the suit in the City Civil Court at Calcutta. The defendant has relied upon the following judgments in support of his contentions.

16. I have also taken note of the provision of Order XXXV Rule 3 of CPC. The said provision for stay of the instant suit is also not applicable in view of the discussion as aforesaid.

17. In the aforesaid facts and circumstances, this application looked at from the angle of Section 10 or Order XXXV Rule 3 of CPC fails.

18. GA 3 of 2022 is accordingly dismissed.

19. Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.