
(1959) 07 AHC CK 0012
In the Allahabad High Court
Case No : Civil Revision No. 218 of 1957

P.P. Gupta

APPELLANT

Vs

East Asiatic Co., Bombay

RESPONDENT

Date of Decision : 21-07-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 115, 151

Citation : AIR 1960 All 184

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : Maheshwari Dayal and G.D. Srivastava, for the Appellant; H.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—This revision, u/s 115, C. P. C. raises the important question whether the inherent power of the Civil Court to consolidate two suits between the parties is affected by Section 10 C.P.C. which enjoins that the Court shall not proceed with the trial of any suit in which the matter in issue is also in issue in a previously instituted suit between the same parties. The learned Additional Civil Judge of Agra, who is seized of both the cases, allowed the application of the respondent and directed the consolidation of two suits between the parties which had been filed on different dates. Against this order the applicant has filed the present revision on the ground that Section 10 C. P.C. is an absolute bar against such consolidation.

2. It is necessary to state very briefly the facts which have led to the filing of this revision. The applicant is P. P. Gupta, proprietor of a printing press in Agra known as the Premier Press. The respondents, the East Asiatic Company. Bombay, are a limited registered Company dealing with machinery and engineering materials. It is common ground that the applicant P. P. Gupta and the Company entered into a contract for the purchase by Gupta of a printing press which was offered by the Company for Rs. 19,000/- for Agra. It is also common ground that this press was

delivered to the applicant at Agra.

It is also not in dispute that the purchaser Gupta paid Rs. 2,000/- in advance and further sums totaling Rs. 3,220/-/- that is, a total sum of Rs. 5,220/- towards the price of the machinery. After this there was a dispute between the parties regarding the performance of the contract. The Company claimed Rs. 13,848/12/- as the balance of the sale price while Gupta. on the other hand, alleged that the machinery had not been installed in accordance with the terms and conditions of the agreement and accused the company of breach of contract and claimed the refund of the moneys already paid by him.

There was correspondence between the parties but no amicable settlement. On 26th April, 1955 the applicant P. P. Gupta filed the first of "he two suits now pending in the court of the Civil Judge, Agra in which be accused the Company of breach of contract and prayed for a decree for Rs. 6,991/7/- being the amount paid by him towards the sale price together with interest. On 8th October, 1956 the Company filed the second suit in the same court for the recovery of the balance of the sale price together with interest. It was stated by learned counsel for the Company and not denied by the learned counsel for the applicant that Gupta filed a suit after he had received a notice from the Company threatening to file a suit against him. According to the company, he anticipated any action on their part by filing his suit. To use a vulgar phrase, he got in his blows first.

3. A comparison of the two complaints would show that they arise out of the same transaction. The applicant Gupta states in his complaint that there was a contract for the purchase by him of a printing press belonging to the Company, He further states that under the terms of the contract of sale, the defendant Company agreed that their Engineer would go to Agra and supervise the installation of the machinery and also train the printers employed by the plaintiff. He further alleges that instead of sending a qualified Engineer, the Company sent one who was not properly qualified. He also states that, owing to the default of the defendant Company, the printing press purchased by him did not work and never acquired the degree of efficiency to which he was entitled. He therefore claimed the refund of Rs. 5,991/7/- paid by him towards the price together with Rs. 1,000/- as damages suffered by him.

4. The respondent Company stated in their complaint that the defendant Gupta agreed to make, hire-purchase agreement for the purchase of a Mercedes printing press for Rs. 19,000/- and that he had paid a sum of Rs. 5,220/- towards the price. They allege that the printing press was delivered to Gupta in accordance with the terms of the contract who installed it in his premises and had been running it ever since. They further state that, with a view of avoiding or delaying payment of the dues of the plaintiff Company, the defendant Gupta had started making pretexts of all kinds, one of them being that the plaintiff Company was liable to install the machinery under the supervision of a particular engineer by the name of Mr. Backhausen and to train the defendant's printers in the art of printing. The plaintiff Company claimed that they performed their part

of the contract but that the defendant Gupta has failed to pay the balance of the price. Accordingly, they have prayed for a decree for Rs. 13,848/12/- together with interest.

5. In the suit filed by the applicant Gupta against respondent Company, which is suit No. 98 of 1955. the learned Civil Judge framed the following issues:--

(1) Did the defendant stipulate that it would install the machinery under the supervision, of Mr. Beckhausen and also to train the plaintiff's printers in the art of printing and that he would remain at Agra till the new machine would start working in full swing. If yes is the plaintiff entitled to rescind the contract and to claim the refund of the amount paid by him towards a part of the price of the machine for breach of this term?

(2) Was it a term of the contract between the parties that the price of the machine would be payable by installments when the machine would start working in full swing?

(3) Did the plaintiff suffer any damages for reason of the breach of the term in issue No. 1, if any. If so. what?

(4) Is the plaintiff entitled to the amount of Rs. 41/7/- towards charges for telephone trunk calls?

(5) To what amount if any is the plaintiff entitled?

6. In the suit filed by the respondent Company against the applicant Gupta which is suit No. 38 of 1956, the learned judge framed the following issues:--

(1) Whether the hire purchase agreement as set up by the plaintiff was obtained by exercise of undue influence, fraud or misrepresentation upon the defendants?

(2) Did the plaintiff stipulate that it would install the machinery under the supervision of Mr. Backhausen and also to train the plaintiffs printers in the art of printing and that he would remain at Agra till the new machine would start working in full swing? If yes, is the defendant entitled to rescind the contract?

(3) Was it a term of the contract between the parties that the price of the machinery would be payable by installments when the machinery would start working in full swing?

(4) Was it a condition precedent to the agreement that the plaintiff was to install the machinery with such efficiency as to turn out 4,000 impressions per hour? If so, the effect of its breach on the agreement?

(5) Is the plaintiff guilty of breach of any of the terms Or conditions of the agreement as aforesaid? If so its effect?

(6) Is the plaintiff entitled to the balance of the price as claimed?

7. It will thus be seen that each party is accusing the other of breach of contract

in the same transaction. The applicant Gupta claims that the Company stipulated that it would install the machinery under the supervision of Mr. Backhausen and also to train the plaintiff's printers in the art of printing but the Company denied this completely. Mr. Gupta alleges that, under the terms of the contract, the price of the machinery was to become payable by installments when the press would start working in full swing, whereas the Company deny that there was any such condition Or liability undertaken by them.

The two issues framed by the learned Judge about this part of the dispute are virtually identical in words. There can be no doubt that these are the crucial issues in each suit and their decision will practically decide the dispute in each suit. Taking a broad view of the matter in controversy between the parties, if the respondent Company made no commitment about sending Mr. Backhausen to install the machinery Or train the applicant's printers, they have committed no breach of contract and are entitled to the balance of the sale price.

On the other hand, if there was such a condition imposed On them, they have not fulfilled it and, if this was a vital condition going to the root of the contract, they are not entitled to recover the balance of the price. Furthermore, if they have committed any breach of the agreement, the applicant Gupta may be entitled to the recovery of the moneys already advanced by him. I used the words, "may be entitled" because there may be other factors On which I make no comment.

8. On 6th September, 1956 the respondent Company made an application for the consolidation of the two suits. The applicant Gupta also made an application, in the suit in which he is the defendant, praying that the trial of that suit be stayed pending the hearing of Ms own suit against the Company. On 18th November. 1956, after the issues had been framed in each suit, the learned Civil Judge passed an order that the two suits be consolidated and heard together. He dismissed the applicant's prayer for the stay of the suit in which he is the defendant. The learned Judge observed:

"Though the provision of Section 10 under the circumstances may seem to apply literally to the case but to my mind the staying of the subsequently instituted suit would amount to rather unnecessary prolongation of litigation between the parties." He also took the view that if the proceedings in the two consolidated suits took place simultaneously, there would be no question of one suit being tried earlier than the other.

9. Aggrieved by the order of the learned Judge the applicant has come to this Court in revision.

10. Learned counsel for the applicant Gupta conceded that the court has an inherent power to consolidate two or more suits in appropriate cases, but he contended that this power cannot be exercised in a case where Section 10 applies. He argued that the provisions of this Section are mandatory and the later suit must be stayed if "the matter in issue is also in issue, directly and

substantially, in a previously instituted suit between the same parties". Learned counsel further contended that the court cannot, in the exercise of its inherent jurisdiction, violate the express terms of the statute or exercise it in the face of an express prohibition. According to him, the simultaneous trial of the two suits would amount to violation of the mandatory injunction in Section 10 that the court shall not proceed with the later suit.

11. In reply learned counsel for the respondent contended that Section 10 C. P. C. is not applicable to the facts of the present case at all. He pointed out that the two reliefs in the two suits are different -- the applicant claiming the refund of the amount paid by him as advance, and the respondent Company praying for the payment of the balance of the sale price. He also pointed out that even if the applicant's suit against the Company is dismissed, this will not lead automatically to a decision in favour of the Company in their own suit, for they must prove their claim that the alleged balance of the sale price is due to them and payable by the applicant.

According to learned counsel Section 10 will apply to a case where the decision in one suit is *res judicata* only if it is in one direction, but not if it is in the other. Learned counsel further pointed out that the applicants' contention, if accepted by this Court, would imply that there can be never a consolidation of two suits pending between the same parties in the same court, for consolidation by its very nature, can take place only where there is substantial similarity between the matters in issue in different suits; But if Section 10 operates as an absolute bar, the result would be that no consolidation can take place in such cases. Lastly, counsel for the respondent contended that this Court should not interfere in a case in which the lower court has exercised his jurisdiction unless it is shown that it acted illegally or with material irregularity in the exercise of its jurisdiction. In other words, he contended that this revision is not maintainable.

12. The last contention of learned counsel for the respondent should be disposed of first. Is the revision maintainable? The applicant's case is that the lower court had consolidated the two cases in violation of the mandatory provisions of Section 10 C.P.C. If he is able to substantiate his case, he will have proved that the trial court has exercised its jurisdiction in a manner prohibited by law. In my view, the applicant has a right to come to this Court and prove his case. I, therefore, hold that the revision is maintainable and overrule the preliminary objection.

13. I shall now deal with the applicant's case on merits. It is well settled that the provisions of Section 10 are mandatory. It enjoins that no court shall proceed with the trial of any suit in which the matter in issue is also in issue, directly and substantially, in a previously instituted suit between the same parties either in the same court or any other court in India having jurisdiction to grant the relief claimed, (I have reproduced those portions of Section 10 which are relevant to the facts of the present case and ignored the others). It is necessary to bear in mind the principle underlying this Section which is really a

corollary of the principle of *res judicata*.

Section 10 prevents courts of concurrent jurisdiction or even the same court from simultaneously trying two parallel suits in respect of the same matter in dispute between the same parties. The fundamental purpose of this prohibition is to avoid the possibility of a conflict of decisions between two courts of competent jurisdiction deciding the same dispute between the same parties, and where disputes are pending in the same court, to avoid multiplicity of litigation. The real question to be decided in this revision, however, is whether the principle underlying Section 10 goes to the extent of taking away the power of the court to consolidate different suits between the same parties which may be pending in the same court and in which the matter in issue is directly and substantially the same.

In his effort to show the mandatory character of the provisions of Section 10, learned counsel for the applicant cited a number of authorities which are not relevant to the facts of the present case. In all of 7them it was impossible, in the very nature of the facts of the particular case, to consolidate the suits pending between the parties and therefore the only ether alternative was to stay the hearing of the later suit to avoid a conflict of decisions or multiplicity of litigation. Learned counsel relied on a decision of the Bombay High Court in *Jai Hind Iron Mart Vs. Tulsiram Bhagwandas*, .

The facts of that case were somewhat similar to those of the present one. The parties entered into a contract which subsequently led to a dispute, each side accusing the other of breach of contract. One party filed a suit for damages in the Calcutta courts while the other sued on the same contract in the Bombay Courts. The Bombay suit was filed after the Calcutta suit. The Bombay High Court directed that the suit in Bombay should be stayed u/s 10 until the hearing and final disposal of the Calcutta suit.

14. However, the crucial difference between that case and the present one is that the question of the consolidation of the two suits could not possibly arise, one having been filed in Calcutta and the other in Bombay. The decision is therefore not helpful in the present controversy -- namely, whether a court has power to consolidate two or more suits between the same parties if the matter in issue in both is directly and substantially the same, and in which consolidation is not only possible but desirable.

15. Learned counsel then relied on the decision of the Punjab High Court in *Raj Spinning Mills, Amritsar Vs. A.G. King Ltd., Excelsior Mills*, in which Kapur and Soni JJ., held that where Section 10 applies, the court has no option but to stay the proceedings. In that case too the dispute arose out of a contract each party accusing the other of breach. One party filed a suit in Amritsar which was dismiss-ed, an appeal being filed against the dismissal in the High Court. Meanwhile, before the appeal was filed in the other suit, the other party to the contract brought a suit also in the Amritsar Court. The plaintiff in the former suit,

which had been dismissed, applied to the trial court for the stay of the second suit during the pendency of the appeal before the High Court.

On these facts it was held that the provisions of Section 10 would apply and the later suit must be Stayed. But it is noteworthy that in this case, too, there was no possibility of consolidation of the two suits the first having been decided before the filing of the second. The decision is therefore no authority for the proposition that Section 10 C.P.C. prohibits the consolidation of two suits where consolidation is possible and even desirable but where the matter in issue in both the suits is directly and substantially the same.

16. Learned counsel also relied on the decision of the Bombay High Court in *Trikamdas Jethabhai Vs. Jivraj Kalianji*, in which it was held that the words of Section 10 are mandatory and require 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. But in "that case, too, there was no question of conflict between the mandatory provisions of Section 10 C.P.C. and the inherent powers of the court to consolidate two or more suits pending before it in appropriate cases. The different suits in that case had been filed in two different courts on different dates and the question of consolidation simply did not arise.

17. Learned counsel relied on a judgment of the Madras High Court in *Velur Munuswami Mudaliar Vs. Darwaja Raghupathi*, . In that case it was held that the provisions contained in Section 10 C.P.C. are mandatory in character and that when the facts of a particular case invoke the operation of that section, the court has no other alternative but to give effect to it and stay the suit. However, this decision applied to two suits which were not capable of consolidation, having been filed in two different courts. It therefore throws no light on the question whether a court trying two suits between the same parties in which matter in issue is substantially the same is prevented by Section 10 from doing so, however, desirable the consolidation may be in the interests of Justice.

18. No authority was cited at the bar in which it may have been held that Section 10 is a bar against the consolidation of different suits pending in the same court between the same parties in which the matter in issue is substantially the same and in which consolidation is not only possible but eminently desirable. The question never appears to have been agitated in the form in which it has been raised before me in the present case.

19. Section 10 C.P.C. does not bar the institution of a second suit during the pendency of an earlier one in which the matter in issue is the same; it merely directs that the trial of the later suit cannot be proceeded with. The court in which the second suit is filed is properly seized of it. It is a court of the competent jurisdiction as regards that suit. Section 10 therefore does not go to the root of the jurisdiction of the court trying the second suit, but merely lays down a rule of procedure; it directs the Court to wait till the decision of the earlier suit. As was held by Vivian Bose. J. in *AIR 1937 132 (Nagpur)* a rule of

procedure can be waived.

In that case the parties in the second suit expressly asked the court to proceed with the second suit. The parties thus waived their rights, if any, to have the second suit stayed and even expressly asked that it should proceed and be tried by the same court along with the earlier suit. Accordingly, this was done and the evidence recorded in one suit was, by agreement, treated as evidence in the other. The learned Judge held that it was not open to either side to turn round and, relying on Section 10, challenge the validity of the proceedings. This case is an authority for the proposition that the direction contained in Section 10 does not go to the root of the jurisdiction of the Court and can be waived in appropriate cases.

In that case, the consent of the parties was considered a sufficient reason to justify a departure from Section 10. If a rule can be waived for one good reason, it may also be waived for another good reason in the interests of justice. The important principle underlying this decision is that the provisions of Section 10 do not destroy the jurisdiction of the trial court and can be waived in appropriate cases. If Section 10 cannot prevent the parties from invoking the inherent power of the Court to consolidate suits in appropriate cases, the Court itself can exercise this power suo motu and direct consolidation in the interests of justice.

20. It has been the settled view of the High Courts all over India that a court has an inherent power to consolidate suits in appropriate cases. The very nature of the principle of consolidation implies that there is a similarity or identity of the matter in issue in different suits between the same parties which should be decided by the court once and for all. The object of consolidation is to avoid multiplicity of litigation between the same parties whenever the matter in issue is substantially and directly the same.

Not only is consolidation considered eminently desirable in appropriate cases but the High Courts have gone further and interfered with the orders of the subordinate courts refusing to consolidate different suits on the ground that such refusals were unjustifiable. In *Nehal Singh v. Ali Ahmed* 15 SW.R. 110 a Division Bench of the Calcutta High Court allowed an appeal against an order of the trial court refusing to consolidate several cases pending before it. The Court observed, "the first court refused to take all the cases together, giving a most unsatisfactory reason for such refusal. . . . We think that the subordinate judge has failed to give good reason for refusing the prayer of the petitioner, and by his refusal he has caused a considerable degree of confusion in the disposal of these appeals. We think for the ends of justice and the proper determination of the question between the parties, that all these cases should be tried together, and all the evidence which is put forward in them, should be looked to.". In this case the High Court passed an order directing the consolidation of several cases between the same parties "relating to the sama matter".

21. Learned counsel for the applicant, however, contends that this Court should

interpret the words of Section 10 strictly and in a literal sense. He pointed out that, thus interpreted, this Section prohibits a court from proceeding with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previous suit which is pending in the same or any other court in India. Learned counsel contended that the words "no court shall proceed with the trial of any suit" must be construed in their ordinary and literal sense and, according to him, they are wide enough to prohibit the trial of a later suit after its consolidation with an earlier one.

He contended that hearing of the two consolidated suits would amount to "proceeding with the trial" of the later suit which is expressly prohibited by Section 10. The whole question, therefore, depends upon the interpretation of the words "no court shall proceed with the trial of any suit." Do these words prohibit the simultaneous hearing of the two suits after consolidation? In my opinion, they do not. As observed by the learned Civil Judge in the impugned order the provisions of Section 10 may seem to apply literally to the facts of the present case, but the question is whether Section 10 should be interpreted so literally as to exclude the simultaneous hearing of two consolidated suits even if such hearing appears to be eminently desirable.

22. The Supreme Court, in a number of decisions, have settled the question as to when the court should interpret a section literally or depart from the literal construction in appropriate cases. In *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, the Court observed:

"Now when a question arises as to the interpretation to be put on an enactment, what the court has to do is to ascertain "the intent of them that make it", and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literal interpretation of the words used in disregard of all other materials.

"The literal construction then" says Maxwell *oft Interpretation of Statutes*, 10th Edition page 19 "has, in general, but prima facie preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke : (1) what was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parliament has appointed; and (4) the reason of the remedy."

The reference here is to *Heydon's case*, 1584-3 Co. Rep. 7a. These are principles well settled, and were applied by this Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . To decide the true scope of the present Act, therefore, we must have regard to all such facts as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress and the other provisions of the statute

In accordance with this principle the Court held that the words "prize

competitions" used in the Prize Competitions Act (42 of 1955) were intended to regulate prize competitions of a gambling character and that competitions in which success depended to any substantial degree on skill could not have been in the minds of the State legislatures which moved Parliament to enact the aforesaid Act under Article 292(1) of the Constitution.

23. In *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, the Supreme Court interpreted the words "retrenchment for any reason whatsoever", used in the Industrial Disputes Act not in the literal sense but in a restricted sense, which did not include the termination of services of all the workmen as a result of the closure of business. Delivering the unanimous opinion of the Court. S. K. Das, J. observed :

"It has been argued that by excluding bone fide closure of business as one of the reasons for termination of the service of workmen by the employer, we are cutting down the expression "for any reason whatsoever" and reading into the definition words which do not occur there. We agree that the adoption of the ordinary meaning gives to the expression "for any reason whatsoever" a somewhat narrower scope; one may say that it gets a color from the context in which the expression occurs; but we do not agree that it amounts to importing new words in the definition In the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing the expression altogether from the context to give it such a wide meaning as is contended for by learned counsel for the respondents".

24. In *Tirath Singh Vs. Bachittar Singh and Others*, the Supreme Court rejected a literal interpretation of Section 99(1)(a) of the Representation of the People Act (43 of 1951) and observed, "It is argued that if the language of the enactment is interpreted in its literal and grammatical sense, there could be no escape from the conclusion that the parties to the petition are also entitled to notice under the proviso. But it is a rule of interpretation well established, that where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence". Accordingly, the Court held that, notwithstanding the wideness of the language used, the proviso contemplated notice only to persons who are not parties to election petition.

25. The principles enunciated above should be borne in mind when interpreting Section 10 C.P.C. for the purpose of determining whether the language of this section prohibits the consolidation of two suits pending in the same court between the same parties even if such consolidation is otherwise eminently desirable. In my opinion, it was not the intention of the legislature to pass a law which would bar such consolidation. As stated in an earlier portion of this judgment, the object of Section 10 is to prevent different courts of concurrent

jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue and also to avoid multiplicity of litigation in the same court.

But the principle of consolidation in no way conflicts with this purpose of Section 10: on the contrary, it preserves and promotes it. A too literal construction of the words "shall proceed with" in Section 10 would therefore lead to the absurd result that parties would be condemned to multiplicity of litigation --the very thing which it is the purpose of Section 10 to avoid. The Court, when ascertaining the meaning of a statute, must not impute to the legislature an intention to create a situation leading to results so absurd and offending against common sense as to give the common man a legitimate cause for complaining that the law is an ass. On the contrary, it is the duty of the judiciary to give, as far as possible, an interpretation of the laws which will inspire confidence in all reasonable men that the laws under which they live are based on sound common sense.

26. In my view, therefore, the words "shall not proceed in any suit" in Section 10 C.P.C. were intended to bar the separate trial of any suit in which the matter in issue was also directly and substantially in issue in a previously instituted suit between the same parties in the same court or in any other court. But these words do not apply to the simultaneous hearing of a later and an earlier suit, after consolidation of the two, if the matter in issue in both is directly and substantially the same. Section 10 was not intended to take away the inherent power of the Court to consolidate in the interests of justice in appropriate cases different suits between the same parties in which the matter in issue is substantially the same. There is no conflict in the principle and purpose underlying Section 10 and the inherent power of the Court to consolidate different suits in appropriate cases. Both are meant to prevent multiplicity of litigation between the same parties. Any interpretation of Section 10 which takes away the power of the Court to consolidate suits would hinder the policy and purpose of Section 10 itself.

27. Learned counsel for the respondents contended that a ban on consolidation of suits will not lead to multiplicity of litigation which can be avoided by applying the principle of res judicata. He argued that the decision in the earlier suit would be res judicata in the matter in issue in the later suit and thus there can be no multiplicity of litigations. This argument erroneously assumes that in consolidated suits the issues are identical and congruent. This is hardly ever the case. Suits may be consolidated for a varieties of reasons -- as for example, when the dispute arises out of the same transaction between the parties, each side accusing the other of breach of agreement. But not all the issues are identical nor are the reliefs. The present case is a typical example. There was an agreement for the sale of printing press between the applicant Gupta and the respondent Company. Today each side is accusing the other of breach of contract.

Thus, the matter in issue common to both suits is : who is guilty of breach of contract? But the suits are not the same. In his suit against the Company, Gupta

claims the refund of the part price advanced by him, while the Company in their suit, sue for the balance of the sale price. Thus, the two reliefs are different. Even if Gupta successfully resists the Company's suit and proves that they are not entitled to recover the balance of the price, this would not give him the relief in his own suit, in which he must prove that he advanced the monies of which he seeks the refund. But. at the same time, it is true that the essential nature of the dispute is the same and the main question in each suit is : which party is guilty of breach of contract? In such a case, it is eminently desirable that the suits should be consolidated and heard together.

28. If the Company's suit is postponed till after the decision in Gupta's suit, the result will be a long delay in the disposal of their claim even if they are the victorious party in Gupta's suit. At first their suit will be stayed. Later, in the event of Gupta's suit being dismissed, the Company's suit will remain stayed during the pendency of Gupta's appeal against the decree of the trial Court. In view of the appalling state of arrears in this Court, the appeal is not likely to be heard for a dozen years after filing. I see no reason why the respondent Company should be made to submit to this inordinate delay when it can be avoided by the consolidation of the two suits.

If they are consolidated, both will be disposed of by a common hearing, without causing any prejudice to either party to the dispute. Learned counsel for the applicant Gupta was not able to point out how his client will be prejudiced if the two suits are heard together. Ultimately, when pressed, he stated that, in the event of Gupta losing both suits, he shall be compelled to file two appeals and thus pay court fee in each, whereas if the Company's suit is stayed, Gupta will be required to file an appeal only in his own suit. In blurting out this explanation, learned counsel let the cat out of the bag, to use a popular expression. The applicant Gupta's motive in preventing consolidation of the two suits appears to be to delay, as long as he can, a decision in the Company's suit and he wants to use his own suit as a weapon for achieving this object.

29. For these reasons I hold that in the case before me, the learned Judge rightly and wisely exercised his jurisdiction in consolidating the two suits between the applicant and the respondent.

30. The revision fails and is rejected with costs. The record shall be returned to the trial Court with a direction that the hearing of the suit shall be expedited.