

(1986) 12 GUJ CK 0002
In the Gujarat High Court

Case No : Civil Revision Application No. 303 of 1983

Raunaq International Ltd.

APPELLANT

Vs

Ota Kandla Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 23-12-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : AIR 1987 Guj 213 : (1987) CivCC 99 : (1987) 1 GLR 599

Hon'ble Judges : G.T. Nanavati, J

Bench : Single Bench

Advocate : D.R. Bhatt, for the Appellant; Y.S. Mankad, for the Respondent

Judgement

1. This revision application arises out of the order dated 13-1-1983 passed by the learned Civil Judge (Senior Division), Bhuj on application Exh.

10/D in Civil Suit No. 53 of 1982. The suit is filed by the opponents against the petitioner. It was filed on 14-6-1982. Before that the petitioner

had filed Civil Suit No. 230 of 1982 in the High Court of Delhi against the opponents. The summons issued in that suit was served on the

opponents and they were directed to appear before the Delhi High Court on 7-4-1982. On that day the opponents did not appear before the

Court; and, therefore, the Delhi High Court passed an order for listing the suit before the Court in the category of ,short matters on 16-4-1982 for

passing appropriate orders. The petitioner on coming to know about the suit filed in the Court of the Civil Judge (Senior Division), Bhuj, have

application Exh. 10/D under S. 10 read with S. 151 of the Code of Civil Procedure, 1908 (hereafter referred to as ""the Code"") requesting the

Court to stay further proceedings in the suit before it till the disposal of Civil Suit No. 230 of 1982 pending in the Delhi High Court, on the ground

that the matters in issue in both the suits arise out of the same contract between the same parties and the matter in issue is directly and substantially the same in both the suits. The learned trial Judge rejected that application on the ground that before it can be decided as to whether the matter in issue in both the suits is directly and substantially the same or not, it is necessary that the parties in both the suits should have filed their written statements and that the issues should be framed in the suits. Till that is done, it would not be possible for the Court to decide whether the matter in issue in both the suits is directly and substantially the same or not. As no written statement has been filed in the present suit and as no issues have been framed in the suit pending in the Delhi High Court, the learned trial Judge held that the stage for making an application under S. 10 of the Code has not been reached and the application given by the petitioner is premature. Aggrieved by that order, the petitioner who is the original defendant in the present suit has filed this revision application.

2. In my opinion, the view taken by the learned trial Judge is not correct. In a given case, it may not be possible for the Court to come to the conclusion whether the matter in issue in both the suits is directly and substantially the same or not till written statements are filed; and if an application under S. 10 of the Code for staying further proceedings of a suit is rejected on such a ground, then no exception can be taken to such a decision. But it is not correct to say as a general proposition of law that till a written statement is filed by the defendant in the subsequent suit his application for staying further proceedings under S. 10 of the Code cannot be entertained and must be rejected as premature. It appears that the learned trial Judge relied upon the decision of Manipur Judicial Commissioner's Court in *L. R. Singh v. H. D. Sharma*, AIR 1964 Manipur 2. As against that, it has been held by the Calcutta High Court in *Shorab Merwanji Modi and Another Vs. Mansata Film Distributors and Another*, and *S. K. Rongta and Co. v. Nawal Kishore Debi Prasad*, AIR. 1964 Cal 373 that the Court would entertain an application of the defendant for stay in a case where he has annexed a copy of the plaint in the previously instituted suit and it can be found out from the copy of the plaint as to what the dispute between the parties is. In *S. M. Modi's* case it is further pointed out by the Calcutta High Court that even in a case where a perusal of

the two complaints is not enough to find out whether the subject-matter of controversy between the parties in the two suits is identical or not, the Court should keep the application pending and take it up for decision after getting the written statement filed, but it should not dismiss the application at that stage. The Punjab and Haryana High Court also took the same view in *Rup Chand v. Basant Lal* AIR 1975 P&H 171. Same view has been taken by the Delhi High Court in *C.L. Tandon Vs. Prem Pal Singh etc.*, . I fully agree with the view expressed by the Calcutta, Punjab and Delhi High Courts.

3. The learned trial Judge in this case has not found that it was not possible for him on a perusal of the two complaints to come to a definite conclusion as to whether the matter in issue in both the suits is directly and substantially the same or not. As stated earlier, he rejected the application on an assumption that the correct proposition of law is that such an application cannot be entertained till the written statement is filed by the defendant. As the learned trial Judge has rejected the application on an erroneous assumption as regards the correct position of law, the order passed by him will have to be set aside.

4. In the result, this revision application is allowed. The order dated 13-1-1983 passed by the learned Civil Judge (Senior Division), Bhuj below Exh. 10/D in Civil Suit No. 53 of 1982 is set aside; and the learned trial Judge is directed to rehear the said application and decide the same in accordance with law and keeping the observations made hereinabove in mind. Rule is made absolute with no order as to costs. Further proceedings in the suit are stayed till the application Exh. 10/D is disposed of by him.

5. Petition allowed.