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**(2011) 07 BOM CK 0046**

**In the Bombay High Court**

**Case No : Writ Petition No. 2686 of 2011**

Ravikumar Shrichandji Kalra and Others

APPELLANT

Vs

Pradeep Singh Sunderlal Chouhan and Others

RESPONDENT

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**Date of Decision : 14-07-2011**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 10

**Citation :** (2012) 1 ALLMR 170 : (2012) 1 CivCC 505 : (2011) 6 MhLj 515

**Hon'ble Judges :** R.M. Savant, J

**Bench :** Single Bench

**Advocate :** P.V. Khare, for the Appellant; Mishra for respondent Nos. 1 to 6, for the Respondent

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**Judgement**

R.M. Savant, J.—Rule. With the consent of the parties made returnable forthwith and heard.

2. The above petition takes exception to the order dated 11-3-2011, passed by the learned 4th Jt. Civil Judge, Senior Division, Nagpur, by which order the application filed by the respondents herein u/s 10 of the CPC for staying the subsequent suit filed by the petitioners herein came to be allowed and the said subsequent suit came to be stayed.

3. The respondents herein are the original plaintiffs in Special Civil Suit No. 1248/2009 filed against the present appellant Nos. 1 & 2 for possession of the suit property and for rescinding of the contract. The petitioners herein have filed Spl. C.S. No. 837/2010 for specific performance of the contract entered into between the respondents herein and the petitioner Nos. 1 & 2. The agreement in question is dated 18-2-2008. The suit filed by the respondents i.e. Spl. Civil Suit No. 1248/2009 has been admittedly filed prior in point of time to the suit filed by the petitioners herein i.e. suit bearing Spl. C.S. No. 837/2010. The respondents herein filed an application u/s 10 of the CPC for stay of the subsequent suit filed by the petitioner on the ground that the issue arising in the suit is substantially the same i.e. in respect of the agreement dated 18-2-2008 and, therefore,

sought a stay to the suit filed by the respondents.

4. The petitioners herein filed their reply and they admitted that though it is obvious from the prayers in the suit that only one suit can be allowed and the direct consequence of it would be the disposal of the other, the petitioners had also stated that both the suits need to be tried together so that there can be common evidence led to substantiate the claim. As indicated above, the trial Court by the impugned order dated 11-3-2011 has allowed the said application particularly on the ground that the matter in issue in both the suits is directly and substantially the same and the decision in one matter would affect the decision in other and that the plaintiffs in the subsequent suit did not dispute the said aspect.

5. It is required to be noted that though a specific plea was made in the reply filed by the petitioners that both the suits ought to be tried together, the said request was totally glossed over by the trial Court as the said aspect has not been dealt with by the trial Court in the impugned order. In my view, considering the nature of the controversy involved, which is undoubtedly as regards the agreement dated 18-2-2008 of which rescission is sought by the respondents and specific performance of which is sought by the petitioners, the trial Court ought to have considered the aspect of trying the said two suits together by clubbing the same as a joint trial may be advantageous to render a quietus to the issue. It cannot be gainsaid that in the said application filed u/s 10, it is incumbent on the Court to pass an order either staying the subsequent suit or refusing it. The trial Court in the facts and circumstances ought to have considered the joint suit of both the suits and if satisfied ought to have ordered so. In view of the fact that the said aspect has not been considered by the trial Court in the instant case, in my view, it would be just and proper to set aside the impugned order dated 11-3-2011 and direct the reconsideration of the said application filed by the respondents afresh. On such consideration, the trial Court should also consider the plea that the said suits should be tried together and in the event the trial Court is of the view that the plea cannot be accepted, it shall record reasons for the same.

6. Though various authorities were cited on behalf of the parties, in support and against the proposition, insofar as the section 10 of the CPC is concerned and for clubbing the matters together, in the view that this Court has taken hereinabove, I do not deem it necessary to refer to the said authorities and it would be open for the parties to cite them before the trial Court if so advised. The petition is accordingly allowed. Rule is made absolute in the aforesaid terms with no orders as to costs.