
(1973) 02 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 784 of 1972

Shri Mohan Lal Thapar

APPELLANT

Vs

Messrs Sard Ispat Udyog Chhehrata, Amritsar and another

RESPONDENT

Date of Decision : 09-02-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (1978) 2 RCR(Rent) 608 : (1973) RCR(Rent) 413

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Advocate : Roop Chand, for the Appellant; Harbans Lal, for the Respondent

Final Decision : Allowed

Judgement

Prem Chand Pandit, J.—In Ludhiana, there is Thapar Iron and Steel Rolling Mill, which is owned by Mohan Lal Thapar. On 31st August, 1966, he had given it on lease to Messrs Sarad Ispat Udyog, Chhehartara, for three years from 1st September, 1966 to 31st August, 1969 and the rent fixed for six months was Rs. 21,000/-. The lessee paid the rent for the first year, which related to the period 1st September, 1966, to 31st August, 1967. Since the rent for the second year was not paid, a suit was brought on 8th May, 1968, by Mohan Lal Thapar against Messrs Sarad Ispat Udyog and Kilash Chand, Proprietor and partner of this firm, defendants No. 1 and 2, for the recovery of Rs. 44,000/-, out of which Rs. 42,000/- represented the rent and Rs. 2,000/- interest.

2. An ex-parte decree was passed in favour of Mohan Lal Thapar on 14th October, 1968, against both the defendants. Since future interest was not allowed to the plaintiff, he filed a Regular First Appeal No. 124 of 1971 in this Court regarding the same and it is still pending.

3. The lessee did not pay the rent for the third year and, consequently, Mohan Lal Thapar had to bring another suit on 16th June, 1969 for the recovery of Rs. 44,000/-. It is said that in this suit also, first of all an ex-parte decree was

passed and then on the application of the defendants, the same was set aside.

On 11th June, 1971, an application u/s 10 of the CPC was filed by the defendants for the stay of the second suit on the ground that the points in controversy in the second suit were essentially the same, which were in the first suit and since the first suit was pending decision by this Court, the second suit should be stayed under the provisions of this section.

4. This application was opposed by the plaintiff, but the trial Judge granted the same, holding that certain matters, which were directly and substantially in issue in the instant case, were also directly and substantially in issue in the appeal pending in this Court between the same parties. Against this order, the present revision petition has been filed by the plaintiff.

5. Section 10 of the CPC reads :

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.

6. I had an occasion to deal with the scope of this section in *Shrimati Naurati and others v. Mehma Singh* (1972) 74 P.L.R. 558, and there I had held :

That the object of the rule contained in section 10 of the CPC is to prevent Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject matter and the same relief. The policy of the law is to confine the plaintiff to one litigation, thus obviating the possibility of two contradictory verdicts by one and the same Court in respect of the same relief. One of the essential conditions for the applicability of the section is that both the suit must be either between the same parties or under whom they or any one of them claim.

7. Learned counsel for the petitioner has relied on a number of authorities in support of the proposition that if a suit for rent for one period has been filed and decided and, subsequently, another suit for a different period is brought, then in such circumstances, section 10 would not apply to the subsequent suit, although the question raised may be the same. The first decision on this point is a Bench ruling of the Calcutta High Court in *Bepin Behary Mazumdar v. Jogendra Chandra Ghosh* AIR 1971 Cal. 248, which has the high authority of Sir Asutosh Mookerjee. There it was observed :

But the section does not go further and does not bar the trial of a suit for rent for a period subsequent to that included in the previously instituted suit for rent; the matters in issue that is, the subject-matters in controversy are obviously different in the two suits. In the first suit, the matter in controversy is, whether A

is entitled to recover from B Rs. 5,000 as rent for the year X. In the second suit, the question in dispute is whether A is entitled to recover from B Rs. 3,000 as rent for the year Y. We are unable to hold that merely because the same question may be involved in the two suits the matters in issue are identical, so as to attract the operation of section 10.

If the contention of the defendants were to prevail, successive suits for rent or for other sums periodically due would be perpetually tied up.

8. This decision was followed by the Lahore High Court in AIR 1938 502 (Lahore) . Then we have the ruling of Sir Abdur Rahman J., in Velur Munuswami Mudaliar Vs. Darwaja Raghupathi, where the learned Judge observed :

But the expression "the matter in issue" as used in section 10 Code of Civil Procedure, does not mean any matter in issue. The matter in issue in a previously instituted suit obviously refers to the entire subject-matter in dispute and not to one of the issues however important it may be for the decision of the suit. Where the amount claimed as rent in the former suit was for a different period from the amount claimed in the later suit. Held that the matter in both the suits was not the same and, therefore, section 10 did not apply.

9. The same view was taken by the Patna High Court in Maharaja Kesho Prasad Singh v. Babu Shiva Suran Lal AIR 51 I.C. 36, Allahabad High Court in Gargi Din Misra Vs. Debi Charan , Rajasthan High Court in Gilloo Mal and another v. Sethani Rattan Kunwar ILR 1953 Raj. 141, and the Judicial Commissioner of Tripura in Prafulla Kumar Das v. Monoranjan Paul AIR 1966 Tria 19.

10. No decision taking a contrary view on this point, namely, when a subsequent suit for the recovery of rent is brought regarding a different period, section 10 would apply to that case as well, was brought to my notice by the learned counsel for the respondent.

11. Since, in the instant case, the second suit was brought for the recovery of rent for a different period than the one, which was the subject-matter of the first suit, the law laid down in the authorities quoted above would apply and following the same, I will hold that section 10 will not apply to the present case.

12. In certain rulings, it has been laid down that even if section 10 does not apply, the Court can take action and give the same relief under the provisions of section 151 of the Code of Civil Procedure, but the learned Judges have said that this provision will be resorted to in cases, where the Court considers it necessary to make such an order in the interest of justice and in order to avoid unnecessary harassment to any of the parties. Apart from the fact that ordinarily the inherent powers of a Court should not be exercised, where there is a specific provision of law applicable to a particular matter. I am of the view that in the instant case, I should not resort to the provisions of section 151 of the CPC for the reason that in the first suit there had been no trial of any issue. As I have already mentioned above, the plaintiff got an ex-parte decree and the pleas,

which the defendant were to take, had not been tried. It would have been a different matter if in a particular case, the stand taken by the defendant had been tried and a decision given thereon and that he could perhaps urge that he should not be harrassed again in a second litigation involving the same controversy. But, in the present case, the position is different because of the ex-parte decree having been passed in favour of the plaintiff without any trial of the various issues that might have arisen in the case and that being so, I will not like to take any action even under the provisions of section 151 of the Code of Civil Procedure.

13. The result is that this petition succeeds and the impugned order quashed. There will, however, be no order as to costs. Parties have been directed to appear before the trial Judge on 5th March, 1973, for further proceedings in this suit.