

(1957) 04 MP CK 0045
In the Madhya Pradesh High Court
Case No : C. Rev. No. 141 of 1956

Sitaram

APPELLANT

Vs

Fakirchand Ganeshram

RESPONDENT

Date of Decision : 15-04-1957

Acts Referred:

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

Citation : (1957) JLJ 696

Hon'ble Judges : Khan, J

Bench : Single Bench

Advocate : A.N. Kak, for the Appellant; B.D. Gupta, for the Respondent

Judgement

Khan, J.—Fakir Chand first of all filed suit No. 15/1949 on 11-10-45 for the recovery of Rs. 3,502-15-0 on the basis of three Hundies, Thereafter, Fakir Chand filed another suit No, 19 of 1949 for Rs. 1000/- and interest on the basis of another Hundi against the same defendant on 9-11-1945. Both suits were tried by the Civil Judge, Gwalior. He decided first suit on 2-3-53 and decreed the claim. The second suit was decided on 24-3-53 and was dismissed. Sita Ram defendant filed appeal No. 127 of 1953 arising out of the first suit on 30-3-53. In the second suit, plaintiff filed an appeal on 7-5-53. Appeal No. 127 of 1953 was before the District Judge himself. The District Judge allowed the appeal, arising out of one Hundi on 31st May 1955 and decreed the claim. Against that decision the defendant filed an appeal before the High Court, which is said to be pending.

2. On August 1956, plaintiff Fakir Chand, made an application before the District Judge that till the decision of the appeal before the High Court, the hearing in the appeal No. 127 of 1953 may be stayed The prayer was granted and this revision is directed against the stay order, purported to have been passed u/s 151 C.P.C.

3. This is a very curious case in which the plaintiff has succeeded in prevailing upon the District Judge, Gwalior to postpone the decision of the appeal against him, As stated already, the plaintiff has brought two separate suits against the

defendant, the first was based on three Hundies, and the other suit was based on a fourth and separate Hundi. From para No. 6 of the judgment of the learned District Judge, it appears that he had stayed this appeal before him mere out of fear of the High Court than for any good reason. He has referred to AIR 1949 Cat. 357 , in which it is held that in case proceedings u/s 10 of the C.P.C. cannot be stayed, provisions of section 151 of the CPC can be invoked. The learned counsel for the respondent in support of this proposition has referred to AIR 1948 297 (Nagpur) and Atula Bala Dasi and Others Vs. Nirupama Devi and Another, . There is no doubt that in case there is no provision in the CPC for staying the proceedings, a court is competent to invoke the aid of section 151 C.P.C. But in every case it has to be determined whether the circumstances justify the exercise of the inherent powers u/s 151 C.P.C. or not. In the cases that have been cited above, what has been stayed is a subsequent suit. But in the case before me, it is not a subsequent suit that is stayed but an appeal is being stayed which arose from a suit that had been instituted and decided earlier and in which the appeal too had been filed earlier. The District Judge has not given any dates of the Hundies to show how the defence taken by the defendant in one case would be of any avail in the other suit. If the judgment in one case re-acts upon the other, then one thing which I fail to understand is that having decided that point in appeal No. 198/53 why has he not proceeded to decide the other appeal which could have been disposed of almost in no time. Why wait for the decision of the High Court, unless the District Judge is not sure of his own decision. The fact must be noted that the plaintiff never asked for a stay in the trial Court, If the point was common, he could have moved the Court u/s 10 of the Civil Procedure Code.

4. For reasons stated above there is no reason whatsoever for postponing the hearing of appeal No. 127 of 1953, and, the District Judge is directed to proceed with it. Parties to bear their own costs.