
(2016) 03 CAL CK 0075
In the Calcutta High Court
Case No : C.O. No. 2838 of 2015

Smt. Rekha Agarwal

APPELLANT

Vs

Tapan Kumar Mishra

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Citation : (2016) AIRCC 2207 : (2016) 4 ICC 673 : (2016) 5 WBLR 90

Hon'ble Judges : Siddhartha Chattopadhyay, J.

Bench : Single Bench

Advocate : Mr. Anath Bandhu Dutta, and Mr. Anil Kumar Bhunia, Advocates, for the Appellant; Mr. Arup Kumar Lahiri and Mr. Alope Kumar Ghosh, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Siddhartha Chattopadhyay, J.—;Challenging the legal acceptability of the Order No. 14 dated 06.05.2015 passed by the learned Civil Judge (Senior Division), Chanchal, Malda, passed in connection with Title Suit No. 24 of 2014, the defendant-petitioner has filed this revisional application contending inter alia that the learned Court below failed to construe the provision of Section 10 of CPC in its proper perspectives and as a result there is a travesty of justice.

2. According to the petitioner she has filed a suit before the Civil Judge (Junior Division), Chanchal at Malda claiming that the agreement dated 10.10.2012 and 27.02.2013 alleged to have been executed between the parties be declared null and void with consequential relief of temporary as well as permanent injunction in that Title Suit No. 267 of 2013. After initiation of that title suit, the defendant of that title suit, under the style of plaintiff, has filed the suit bearing Title Suit No. 24 of 2014 for specific performance of the agreement dated 17.02.2013 before the learned Civil Judge (Senior Division) Chanchal at Malda.

3. Therefore, the main bone of contention is the agreement dated 27.02.2013, which according to the present petitioner, has been procured by taking the

chance of her illiteracy and by practising fraud upon her. The present opposite party as plaintiff has filed the suit bearing Title Suit No. 24 of 2014 for specific performance of contract in terms of agreement dated 27.02.2013.

4. Learned Counsel appearing on behalf of both sides argued at length. Learned Counsel appearing on behalf of the present opposite party vehemently opposed the contention of the present petitioner stating inter alia that both the suits should be heard analogously because the former suit is pending before the Civil Judge (Junior Division), Chanchal at Malda whereas the latter suit is filed before the Civil Judge (Senior Division), Chanchal at Malda. I wonder how the Civil Judge (Senior Division) can hear the both the suits analogously. Learned Court below in the body of the order held "both the suits may be tried analogously." He has relied on the decision reported in 2004 SCC 85. That judgment was passed on different facts and does not fit in the present case, because question of incompetency to grant relief claimed in subsequent suit does not arise.

5. If the latter suit i.e. Title Suit No. 24 of 2014 be not stayed in that case purpose of filing Title Suit bearing No. 267 of 2013 will be infructuous. The Civil Judge (Senior Division) has no jurisdiction to take back the Title Suit No. 267 of 2013 in his file because that power lies within the District Judge. The persons aggrieved never filed any such application before the District Judge for withdrawing the same from the Civil Judge (Junior Division) and to transfer the same to the Civil Judge (Senior Division) for trial.

6. Now I am to consider the objectives of Section 10. The use of negative expression in Section 10 i.e. "no Court shall proceed with the trial of any suit" makes the provision mandatory and the Court in which subsequent suit has been filed is prohibited from proceeding with the trial of that suit, if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon the bilateral litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two Courts in respect of the same relief and to protect the defendant from multiplicity of proceeding. Fundamental test of Section 10 is whether any final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. Section 10 of CPC applies only in cases where whole of the subject matter in both the suit is identical. The key words used in Section 10 are "the matter in issue is directly and substantially in issue" in the previously instituted suit. The words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject matter in both the proceedings are identical.

7. Suit for specific performance of contract was filed on the basis of alleged agreement dated 27.02.2013 and that is the subject matter of Title Suit No. 24

of 2014. That agreement has been claimed to be void on the ground of practicing fraud and for that purpose the Title Suit No. 267 of 2013 was filed by the present petitioner. Therefore, the decision of both the suits hinges on the fate of that agreement. In such circumstances, I am of the view that in terms of Section 10 and by virtue of the guidelines given by our Hon"ble Apex Court latter suit should be stayed till the disposal of the former suit.

8. Learned Civil Judge (Senior Division) in his order discussed many things which has got no substance. He has considered the theory of "if and but." The order passed by the learned Civil Judge (Senior Division) is demonstratably unsustainable and he was guided by emotion and passion than that of reason. The impugned order passed by the learned Civil Judge (Senior Division) is perverse one and it is hereby set aside. The suit bearing Title Suit No. 24 of 2014 be stayed till the disposal of the Title Suit No. 267 of 2013 pending before the learned Civil Judge (Junior Division) Chanchal at Malda.

9. Let a copy of this order be sent to the learned Court below for his information and taking necessary action in accordance with law.

10. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.