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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 398/2022 & CM APPL.20682/2022

RUCHIKA PUGLANI Petitioner

Through: Mr.Anjum Kumar, Adv.

versus

AASNA DIGIN & ANR. Respondents

Through: Mr.Joel, Adv. for R-1

Mr.Rishab Raj Jain, Adv. for BSES-RPL/R-2

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

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28.10.2022

1. The impugned order dated 15th February 2022, passed by the learned Additional Senior Civil Judge (“the learned ASCJ”), invokes Section 10 of the Code of Civil Procedure, 1908 (CPC) to stay the trial in CS SCJ 1421/2021 (*Ruchika Puglani v. Aasna Digin*) pending the outcome of CS ADJ DJ 482/2021 (*Aasna Digin v. Pawan Hans Taheem*). Ruchika Puglani, the petitioner before me, is the plaintiff in CS SCJ 1421/2021 (the trial in which has been stayed) and Defendant 2 in CS ADJ DJ 482/2021.

Facts

CS ADJ DJ 482/2021

2. CS ADJ DJ 482/2021 was instituted by the respondent Aasna Digin (“Aasna”) against Pawan Hans Taheem (“Pawan”) and Ruchika Puglani (“Ruchika”) who are husband and wife. Ruchika is the petitioner in the present petition.

3. Aasna claimed, in the plaint in CS ADJ DJ 482/2021, to be the landlord of Pawan and Ruchika in respect of the premises situated at 70/18, Second Floor, B Side, B-1 Extension, Sewak Park, Uttam Nagar, Delhi 110059 (hereinafter “the suit property”). It was claimed that Aasna had let out the said premises to Pawan and Ruchika *vide* lease deed dated 13th April 2019 for a period of 11 months at a fixed monthly rent of ₹ 11,000/-. The period of lease was to expire on 23rd January 2020. Even after the expiry of the period of lease, the plaint averred that Aasna allowed Pawan and Ruchika to continue residing in the suit property on oral monthly lease, and that Pawan and Ruchika had agreed to vacate the suit property on seven days’ notice.

4. Aasna further averred, in her plaint, that Pawan and Ruchika were in default of rent since January 2021. Aasna claimed to have called upon them to vacate the suit premises in March 2021. On Pawan and Ruchika failing to do so, Aasna instituted CS ADJ DJ 482/2021. The suit also averred that, apart from arrears of rent, Pawan and Ruchika were in arrears of electricity charges, water charges, RWA charges and other utility charges, totalling approximately to ₹ 21,000/-.

5. Premised on the aforesaid assertions and allegations, Aasna

prayed, in CS ADJ DJ 482/2021, that Pawan and Ruchika be directed to immediately vacate the suit property and that vacant and peaceful possession of the suit property be restored to her. Additionally, outstanding monetary claims, which were allegedly remaining to be paid by Pawan and Ruchika, were also claimed in the suit.

6. Mr. Anjum Kumar, learned Counsel for Ruchika, the petitioner in the present petition, submits that his client is yet to receive summons in the aforesaid suit.

CS SCJ 1421/2021

7. CS SCJ 1421/2021 was instituted by Ruchika against Aasna Digin and BSES Rajdhani Power Ltd. (“BSES”). Pawan is not a party in the said suit.

8. Ruchika contends, in the plaint in CS SCJ 1421/2021, that she, with her husband Pawan, were co-tenants in respect of the suit property, enjoying electricity supply provided by BSES. The plaint, while admitting that there was matrimonial discord between Pawan and Ruchika, averred, nonetheless, that Ruchika continued to reside in the suit property and that no electricity charges were due to BSES. While alleging that Aasna was employing coercive measures to evict Ruchika from the suit property, without due justification, the main grievance of Ruchika, in her plaint, stemmed from an incident which took place at 5 p.m. on 9th December 2021, when electricity in the suit property was suddenly disconnected. On enquiring into the matter,

Ruchika claims that the meter, through which electricity was supplied to the suit property, was found missing. On visiting the office of BSES, Ruchika was informed that electricity had not been disconnected by BSES but that the case was one of theft of the electricity meter, for which the BSES authorities advised Ruchika to approach the police. Following the said advice, the plaintiff avers that an FIR was lodged by Ruchika at the police station at about 12.22 a.m.

9. Despite repeated efforts to contact the concerned officials at BSES, the plaintiff in CS SCJ 1421/2021 alleges that electricity at the suit property was not restored, despite the obligation of BSES to do so, given that no dues to BSES remained pending. Significantly, para 19 of the plaintiff, which sets out the cause of action on the basis of which the suit was instituted, reads thus:

“19. That the cause of action arose firstly when the plaintiff alongwith her husband taken on rent the suit property. It again arose on 09.12.2021 when the electricity meter of the suit property was removed by the defendants in connivance with each other. It again arose on 10.12.2021 when the plaintiff alongwith her mother at around 10:30 am went to the office of the defendant No.2 at District Centre, who refused to address the grievance of the plaintiff. It again arose on 13.12.2021 the plaintiff received the reply from the customer care of the defendant No.2 that to contact the area division office for removal of her grievance and it further arose on 14.12.2021 the plaintiff again went to the area division office of the defendant No.2 at BLOCK-B, SEWAK PARK, DWARKA, NEW DELHI-110059 but the defendant No.2 in connivance with defendant No.1 have refused to restore the electricity connection in the suit property. The cause of action is still continuing one as the defendants have failed to restore the electricity connection of the plaintiff.”

10. Ruchika, therefore, in her plaint, sought a decree of mandatory injunction against the defendants directing BSES to restore the electricity connection and to install a fresh electricity meter in the suit property and for an injunction restraining the respondents from disconnecting or removing the electricity connection/meter from the suit property.

The dispute

11. Aasna filed an application, before the learned ASCJ in CS SCJ 1421/2021, seeking stay of trial in the said suit, citing, for the purpose, the pendency of CS ADJ DJ 482/2021 instituted prior in point of time.

12. The learned ASCJ has, *vide* the impugned order dated 15th February 2022, allowed the said application and has, consequently, stayed trial in CS SCJ 1421/2021 pending proceedings in CS ADJ DJ 482/2021.

13. Ruchika claims to be aggrieved thereby.

The impugned order

14. The learned ASCJ has, in arriving at his decision, proceeded on the premise that the right to electricity is but a facet of the right to enjoy possession of immovable property. A person in possession of immovable property cannot, regardless of the nature of his possession, claim a right to electricity. To illustrate this position, the

learned ASCJ has posed a poser, as to whether a trespasser in immovable property could claim an electricity connection and has, needless to say, answered the query in the negative.

15. The learned ASCJ has proceeded to frame the question that arose before him as “where the plaintiff is entitled to enjoy the suit property”. This issue, he holds, was the issue which formed subject matter of consideration in CS ADJ DJ 482/2021, which required the Court to decide “whether or not the plaintiff is entitled to retain possession of the suit property”. Thus, holds the learned ASCJ, the matters in issue in both the suits were substantially the same.

16. The learned ASCJ has further observed that BSES was merely an agent of Aasna and was doing what was asked of it by Aasna. As, therefore, in the perception of the learned ASCJ, Ruchika and her husband Pawan were sailing in the same boat insofar as Aasna was concerned, and were claiming a right to remain in the suit property under the lease deed, the learned ASCJ holds that the requisite ingredients of Section 10 of the CPC exist in the present case.

17. On the said premise, the learned ASCJ has proceeded, as already noted, to stay the trial of CS SCJ 1421/2021, pending proceedings in CS ADJ DJ 482/2022.

Rival Contentions

18. I have heard Mr. Anjum Kumar, learned Counsel for the

petitioner and Mr. Joel, learned Counsel for the respondent at considerable length. The matter has been argued threadbare.

19. Mr. Anjum Kumar submits that the impugned order cannot sustain in law, as the issues in CS SCJ 1421/2021 and CS ADJ DJ 482/2021 were different, the parties were different and the reliefs sought were different. The mere fact that some issues may be overlapping, he submits, cannot be a ground to stay the trial in the suit instituted later, pending the outcome of that instituted earlier.

20. Mr. Joel, supporting the impugned order submits, on the other hand, that the learned ASCJ was perfectly justified in the view he took. He submits, echoing the opinion expressed by the learned ASCJ that, if Ruchika had no right to stay in the suit property, she could, equivalently, have no right to seek restoration of electricity. The right to electricity, therefore, he submits, is a consequence of her right to stay in suit property. If, therefore, CS ADJ DJ 482/2021 were to be decided against Pawan and Ruchika and in favour of Aasna, he submits that the wind would proverbially stand knocked out of the sails of CS SCJ 1421/2021 instituted by Ruchika. The decision in CS ADJ DJ 482/2021 therefore, he submits, would also operate as *res judicata*, where CS SCJ 1421/2021 was concerned.

21. These circumstances, according to Mr. Joel, sufficiently justify the passing of the impugned order by the learned ASCJ.

22. Mr. Joel has pressed, into service, paras 9 and 11 of the report in

*Aspi Jal v. Khushroo Rustom Dadyburjor*¹, paras 23 and 24 of the report in the judgment of a learned Single Judge of this Court in *H.S. Sahni v. Mukul Singhal*², paras 4 and 5 of the report in *Gupte Cardiac Care Centre and Hospital v. Olympic Pharma Care (P) Ltd.*³ and various passages from the judgment of a learned Single Judge of the High Court of Allahabad in *Ram Narain v. Ram Swarup*⁴. He further contends that the test which should apply to Section 10 would be the same which applies to Section 11, inasmuch as one of the prime considerations in deciding whether the trial of the later suit is required to be stayed under Section 10 is whether the decision in the earlier suit would operate as *res judicata* in the later suit. Mr. Joel extrapolates the argument to contend that Explanations IV and VI to Section 11 of the CPC should also apply, *mutatis mutandis*, to Section 10. Apropos the scope and ambit of Explanation VI to Section 11 of the CPC, Mr. Joel relies on *Narayana Prabhu Venkateshwara v. Narayana Prabhu Krishna Prabhu*⁵.

23. Among other things, submits Mr. Joel, concurrent proceedings in CS ADJ DJ 482/2021 and CS SCJ 1421/2021 might result in contrary findings by the Courts seized with the said suits on the aspect of termination of the lease whereby Pawan and Ruchika were permitted to reside in the suit property.

¹ (2013) 4 SCC 333

² (2022) 89 PTC 565

³ (2004) 6 SCC 756

⁴ AIR 1962 All 108

⁵ (1977) 2 SCC 181

Analysis

24. The scope and ambit of Section 10 of the CPC is no longer *res integra*. They stand exhaustively delineated by the judgments of the Supreme Court in *National Institute of Mental Health & Neuro Sciences v. C. Paremshwara*⁶ (“NIMHANS” hereinafter) and *Aspi Jal*¹.

25. I have, in my earlier decisions in *Amita Vashisht v. Tarun Vedi*⁷ and *Hnunpuii v. MCD*⁸, had an occasion to peruse the said decision and opine regarding the scope of Section 10. I deem it appropriate, with humility, to reproduce certain passages from my decisions in *Amita Vashisht*⁷ and *Hnunpuii*⁸, which considered and took into account the principles enunciated in *NIMHANS*⁶ and *Aspi Jal*¹ thus:

From *Amita Vashisht*⁷

“20. The law relating to Section 10 has been authoritatively expounded by the Supreme Court in its decisions in *NIMHANS*⁶ and *Aspi Jal*¹.

21. Suits, pending before different courts, may often have overlapping issues. The result of one suit may often influence the outcome of another. The CPC contains various provisions to deal with such contingencies. *Inter alia*, where suits involved issues which are overlapping and where the outcome of one suit may materially affect another, the suits may be consolidated, in exercise of the jurisdiction vested by Section

⁶ (2005) 2 SCC 256

⁷ 2022 SCC OnLine Del 2954

⁸ 2022 SCC OnLine Del 2654

151 of the CPC. The power to consolidate, as held in *Mahalaxmi Cooperative Housing Society Ltd. v. Ashabhai Atmaram Patel*⁹ is, in fact, intended “to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action”. “Consolidation of suits is”, as the same decision holds, “ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses and the parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials”. Para 18 of the report in *Prem Lala Nahata v. Chandi Prasad Sikaria*¹⁰ delineates, precisely, the power of consolidation, as well as the occasion for its exercise, thus:

“18. It cannot be disputed that the court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. *The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits.* (See Halsbury's Laws of England, Vol. 37, para 69.)”

22. As against this, Section 10 of the CPC is a somewhat drastic provision, inasmuch as it brings the trial in the later suit to a complete halt. It eviscerates, therefore, in a manner of speaking, the right of the litigant to expeditious trial. The corridors of the court not being the most habitable of places, where one would choose to linger long, Section 10 is required to be construed strictly.

⁹ (2013) 4 SCC 404

¹⁰ (2007) 2 SCC 551

23. It is not necessary for this Court to enter into the niceties of the provision. As already noted, the provision has been examined in considerable detail by the Supreme Court in its decisions in *NIMHANS*⁶ and *Aspi Jal*¹, which are regarded as authorities on the issue.

24. Para 8 of *NIMHANS*⁶ and paras 9, 11 and 12 of *Aspi Jal*¹ read thus:

*NIMHANS*⁶:

“8. The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties *in respect of the same matter in issue*. *The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical*. The key words in Section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “directly and substantially in issue” are used in contra-distinction 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 subject matter in both the proceedings is identical.”

*Aspi Jal*¹

“9. Section 10 of the Code which is relevant for the purpose reads as follows:

“**10. Stay of suit.** - 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.

Explanation.—The pendency of a suit in a foreign court does not preclude the courts in India from trying a suit founded on the same cause of action.”

From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. 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 the 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 the underlying object of Section 10 of the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel 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 is aimed to protect the defendant from multiplicity of proceeding.

11. *In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether “the matter in issue is also directly and substantially in issue in previously instituted suits”. The key words in Section 10 are “the matter in issue is directly and substantially in issue in the previously instituted suit”. The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer is in affirmative, the subsequent suit is not fit to be stayed. However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.*

12. *As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what “the matter in issue” exactly means? As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where few of the matters in issue are common and will apply only when the entire subject matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue.”*

(Emphasis supplied)

25. No doubt, both the decisions have underscored, as a “fundamental test”, for the purposes of Section 10 of the CPC, being whether, on a final decision reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. Even so, both the decisions go on to observe that, in order for Section 10 to be applied, *there must be complete identity of subject matter in both suits*. It has been emphasized, in both the decisions, that the key expression in Section 10 are “directly and substantially in issue”, which have been contra-distinguished from the expression “incidentally or collaterally in issue”.

26. “Therefore”, as held in both the decisions “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 is identical”.

27. This aspect stands further clarified in *Aspi Jal¹*. In para 9 of the report in *Aspi Jal¹*, the Supreme Court has held that “the basic purpose and the underline object of Section 10 of the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of “*same cause of action, same subject matter and the same relief*.” As a result, the effort, as per the said decision, as “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 is aimed to protect the defendants from multiplicity of proceedings”.

28. Interestingly, in *Aspi Jal¹*, the parties in all suits were the same. The courts in which the earlier suits had been instituted were competent to grant the relief sought in the latter suit. Even so, the Supreme Court observed that the issue remained to be adjudicated “as to whether the matter in issue is also directly and substantially an issue in previously instituted suit”. Underscoring, once again, the importance of the expression “directly and substantially in issue”, the Supreme Court went on to hold that, even if “many of the matters in issue are common, including the issue of whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code the entire subject matter of the two suits must be the same”. It

was categorically held that Section 10 “will not apply where a few of the matters are common and will apply only when the entire subject matter of the controversy is same”.

From *Hnunpui*⁸

“12. Section 10 of the CPC reads thus:

“10. **Stay of suit.** - 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.

Explanation. - The pendency of a suit in a foreign court does not preclude the Courts in India from trying a suit founded on the same cause of action.

13. *NIMHANS*⁶ crystallizes the principles governing Section 10 of the CPC thus, in para 8 of the report:

“8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits *in respect of the same matter in issue*. The object underlying Section 10 is to avoid two parallel trials *on the same issue* by two courts and *to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit*. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties *in respect of the same*

matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are “the matter in issue is directly and substantially in issue” in the previous 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 is identical.”

(Emphasis supplied)

14. In *Aspi Jal¹*, the Supreme Court, relying on *NIMHANS⁶*, held, in para 9 of the report, thus:

“9. From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a court to which provisions of the Code apply, it shall not proceed with the trial of another suit *in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties*. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. 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 the 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 the underlying object of Section 10 of the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel 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 is aimed to protect the defendant from multiplicity of proceeding.”

(Emphasis supplied)

15. As such, what is required, for a trial in a later suit to be stayed, during the pendency of an earlier suit, is unity and identity of the subject matter in issue in the two suits, to the extent that a final decision in the former suit would operate as *res judicata* in the latter. A triple identity test has been identified by the Supreme Court; there must be identity of cause of action, identity of subject-matter, and identity of relief. *Overlapping* is insufficient; what is required is *identity*.”

(Emphasis in original)

26. In my considered opinion, the law enunciated by the Supreme Court with respect to Section 10 is clear, categorical and unexceptional. Though Mr. Joel did emphasise para 11 of the decision in *Aspi Jal¹*, as requiring to be read alongwith para 9, the two paragraphs do not appear to me to be inconsistent in any manner. No doubt, one of the principal tests to be applied, in deciding whether to stay the trial of a suit later instituted in point of time, on the ground of pendency of an earlier suit, is whether a decision in the earlier suit would operate as *res judicata* in the later suit. That test, however, cannot be read in isolation. Section 10, for its application, necessarily requires that the two suits should be (to quote from para 9 of the report in *Aspi Jal¹*) “in respect of same cause of action, same subject matter and the same relief”. The decision in *Aspi Jal¹* underscores the position by identifying the objective of Section 10 as “avoiding the possibility of contradictory verdicts by two courts *in respect of the same relief*”. As such, it is not merely avoiding of the possibility of contradictory verdicts of two courts which has to guide the exercise of

jurisdiction under Section 10. The possibility of contradictory verdicts has to be in respect of the same relief. In the considered opinion of this Court, it would be completely impermissible for this Court, bound by Articles 141 and 144 of the Constitution of India, to undermine, in any manner, the requirement of sameness of relief, which has been repeated twice in para 9 of *Aspi Jal*¹. The contention advanced by Mr. Joel, if accepted, in my considered opinion, would amount to reducing, to a redundancy, the words “in respect of the same relief”, as contained in para 9 of *Aspi Jal*¹.

27. Indeed, the decision of the Coordinate Single Bench of this Court in *H.S. Sahni*², on which Mr. Joel relies, correctly understands this position. Para 23 of the report in the said case reads thus:

“23. The fundamental test that is to be applied to determine whether Section 10 was applicable or not, is to see whether on the final decision being reached in the first suit, such decision would operate as *res-judicata* in the subsequent suit. Where there was “identity of matter” in both the suits, i.e., the whole of the subject matter in both the proceedings were identical, even if further relfs were claimed in the subsequent suit, it would be immaterial and the second suit would necessarily have to be stayed.”

(Emphasis supplied)

28. Further, the subject matter of the two suits must be identical. Identity of subject matter and identity of relief are, therefore, the inescapable *sine qua non* for Section 10 to apply. The mere fact that the outcome of one suit may have an effect on the outcome of the other is insufficient to invoke the said provision. It cannot be forgotten that what is required by Section 10, even as per the statute, is

that the matter in issue in the suit later instituted *is also directly and substantially in issue*” in the earlier instituted suit. The Court cannot be unmindful of the use of the word “and” between “directly” and “substantially”. What is required, therefore, is not mere substantial similarity of issues. There must be direct *and* substantial similarity of issues in the two suits.

29. Given the facts of the present case, it is not necessary, in my view, to enter in greater detail into the niceties of Section 10 of the CPC.

30. Applying these tests to the case at hand, it is apparent that no case, for staying the trial in CS SCJ 1421/2021, could be said to exist. CS ADJ DJ 482/2021 was a suit instituted by Aasna seeking to evict Pawan and Ruchika from the suit property. CS SCJ 1421/2021, on the other hand, is a suit instituted by Ruchika, complaining about disconnection of electricity in the suit property despite there being no payment outstanding to BSES in respect thereof. The reference to the dispute in CS ADJ DJ 482/2021, though it finds place in CS SCJ 1421/2021 is, in the considered opinion of this Court, completely tangential to the actual dispute forming subject matter of the suit instituted by Ruchika.

31. The parties to the two suits in the present case are different. BSES is not a party in CS ADJ DJ 482/2021. Indeed, there could be no question of BSES being a party in the said suit, as no relief, with respect to restoration of electricity or installation of any electricity

meter, was even remotely in contemplation therein. CS ADJ DJ 482/2021 being an eviction suit, the parties to the suit were Aasna on the one hand as the landlady, and Pawan and Ruchika on the other hand, as the tenants. The suit does not make any reference to electricity, its disconnection, theft of any electricity meter, affixation of any electricity meter or restoration of electricity.

32. As against this, CS SCJ 1421/2021 is a simple suit predicated on disconnection of electricity consequent to theft of an electricity meter. The prayer in the suit is for restoration of electricity and reinstallation of the meter, as there were no dues pending against BSES.

33. Viewed any which way, and howsoever widely one may interpret Section 10, in the considered opinion of this Court, it is impossible to hold that there is even *similarity*, much less *identity*, of subject matter, between CS ADJ DJ 482/2021 and CS SCJ 1421/2021. The mere fact that, if she has no right to continue in the suit property, she may not have a right to electricity, cannot be a ground to hold that there is identity of subject matter in the two suits.

34. Mr Joel sought to contend that, as a person allegedly not entitled to continue in the suit property, Ruchika had no right to electricity. As a submission advanced to support the impugned order, the contention is completely misguided. It is necessary to appreciate, precisely, the case set up by Ruchika in CS SCJ 1421/2021. Ruchika's case is that, as an occupant who is in occupation of the suit property, and who has

paid all dues to BSES, she is entitled to electricity. If the meter was removed, and electricity disconnected thereby, she claims a right, as such occupant, to re-installation of the meter and reconnection of electricity. BSES, quite obviously, is not concerned with the personal feud between Ruchika and Aasna. The claim of Ruchika in CS SCJ 1421/2021 is against BSES, not against Aasna. Aasna has been impleaded as a defendant in CS SCJ 1421/2021 only because Ruchika alleges that Aasna was employing coercive measures to ensure her removal from the premises. That allegation, though it figures in the plaint in CS SCJ 1421/2021, is really tangential to the claim of Ruchika therein, and, for that precise reason, the attempt of Mr Joel to capitalize on the said allegation to infer identity of subject matter between CS SCJ 1421/2021 and CS ADJ DJ 482/2021 must fail. The observation, of the learned ADJ, that BSES was an agent of Aasna, as a ground to justify staying of trial in CS SCJ 1421/2021 is, therefore, equally off the mark.

35. The error in the impugned order actually stems from the initial error, on the part of the learned ADJ, in identifying the issue before him in CS SCJ 1421/2021. The learned ADJ identifies the issue as “whether the plaintiff is entitled to enjoy the suit property”. That, actually, was not the issue in controversy in the suit. The issue before the learned ADJ was whether, as an occupant of premises in respect of which complete electricity dues stood paid to BSNL, Ruchika was entitled to replacement of the stolen electricity meter and restoration of electricity. Once the issue is thus reworded, no illusion of identity of subject matter between CS SCJ 1421/2021 and CS ADJ DJ

482/2021 would remain.

36. There is, in fact, complete want of identity and even similarity, in respect of cause of action, subject matter and relief in the two suits. The cause of action in CS ADJ DJ 482/2021 was continued occupation, by Pawan and Ruchika, of the suit property, despite alleged termination of the lease. The cause of action in CS SCJ 1421/2021, on the other hand, was disconnection of electricity and theft of electricity meter despite the electricity dues having been paid up to date. The subject matter of the two suits is also different, as CS ADJ DJ 482/2021 was in the nature of an eviction suit and CS SCJ 1421/2021 was a suit complaining about disconnection of electricity and theft of an electricity meter and seeking restoration of the *status quo ante*. The relief sought in the two suits is also completely different, inasmuch as CS ADJ DJ 482/2021 sought eviction of Pawan and Ruchika from the suit property and restoration of possession of the suit property to Aasna, whereas CS SCJ 1421/2021 sought installation of an electricity meter and restoration of electricity.

37. There being complete want of identity or even similarity of cause of action, subject matter or relief in the two suits, I am of the opinion that the learned ASCJ was in error in staying the trial of CS SCJ 1421/2021 pending the outcome of CS ADJ DJ 482/2021.

38. In view of the clear facts in the present case, it is not necessary for this Court to enter into the arguments of Mr. Joel, though persuasively articulated, in respect of Section 11 vis-à-vis Section 10,

and the decision in *Narayana Prabhu Venkateshwara*⁵, on which he sought to place reliance.

Conclusion

39. Resultantly, the impugned order is quashed and set aside. The application of the respondent under Section 10, as preferred before the learned ADJ in CS SCJ 1421/2021 would, accordingly, stand dismissed.

40. This petition is allowed in the aforesaid terms with no orders as to costs. Miscellaneous applications, if any, also stand disposed of.

C.HARI SHANKAR, J

OCTOBER 28, 2022/kr

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