

SUPREME COURT OF INDIA

National Institute of Mental Health and Neuro Sciences

Vs.

C. Parameshwara

C.A.No.8038 of 2004

(Arijit Pasayat and S.H.Kapadia JJ.)

13.12.2004

JUDGMENT

S.H.Kapadia, J.

1. Leave granted.
2. This appeal by grant of special leave is directed against judgment and order dated 8.9.2003 passed by the High Court of Karnataka in Civil Revision Petition No.2211 of 2003.
3. Briefly stated, the facts are as follows:

“On 29.6.1985, respondent herein was appointed as senior pharmacist in National Institute of Mental Health & Neuro Sciences, appellant herein. On 21.6.1988, respondent herein was charge-sheeted for alleged misappropriation of drugs to the extent of Rs.1,79,668.46. A detailed and elaborate enquiry was conducted by the enquiry officer. On 20.2.1993, the enquiry officer submitted his findings holding that the respondent, as a senior pharmacist, was responsible for shortages of drugs in the year 1987 to the extent of Rs.1,79,668.46. By show-cause notice dated 1.3.1993, the disciplinary authority, being the Director of the appellant-Institute, stated that he has perused the enquiry report dated 20.2.1993 and he was satisfied with the findings given by the enquiry officer. Consequently, by the said show-cause notice, the respondent herein was called upon to show-cause why penalty of removal from service should not be imposed. By the said show-cause notice, the respondent herein was asked to explain as to why the pecuniary loss suffered by the appellant be not recovered from him. The respondent herein submitted his reply to the show-cause notice. By order dated 12.4.1993, the disciplinary authority ordered removal of respondent from service and also directed the respondent to reimburse the appellant to the extent of pecuniary loss suffered. Being aggrieved, the respondent herein moved the appellate authority.”

4. By notice dated 10.6.1993, the appellant called upon the respondent to pay Rs.1, 79,668.46

on and before 30.6.1993, on account of the pecuniary loss suffered by the appellant. On failure on the part of the respondent to reimburse the loss, the appellant filed civil suit no.1732 of 1995 in the Court of City Civil Judge, Bangalore, seeking a decree for Rs. 1,79,668.46 with interest. The said suit was instituted on 13.3.1995. On 16.2.1996, the respondent herein filed his written statement in the above suit. On 23.12.1997, the Government of Karnataka referred the industrial dispute raised by the respondent to the Labour Court at Bangalore for adjudication. The question before the Labour Court was whether the action of the appellant in removing the respondent from service by order dated 12.4.1993 was justified. On 16.8.2000, issues were framed by the Civil Court in the aforesaid suit no.1732/95, the main issue being whether the Institute proves that the respondent has caused pecuniary loss of Rs.1,79,668.46. On 29.10.2001, the Labour Court set aside the order of removal dated 12.4.1993 and directed reinstatement of the respondent with continuity of service but without back wages.

5. Aggrieved by the award of the Labour Court the appellant preferred writ petition no. 24348 of 2002 in the High Court questioning the award of the Labour Court dated 29.10.2001. By interim order dated 24.7.2002, the High Court stayed the operation of the order of reinstatement dated 29.10.2001 passed by the Labour Court.

6. On 20.6.2003, the respondent herein filed an application under section 10 read with section 151 CPC, in the said suit no. 1732/95. By the said application, the respondent herein sought stay of the said suit till disposal of the writ petition no. 24348/02. By order dated 20.6.2003, the application for stay of the suit filed by the respondent was dismissed by the City Civil Judge, Bangalore. Being aggrieved, the respondent herein filed Civil Revision Petition No. 2211/03 before the High Court challenging the order of the City Civil Judge, Bangalore, dismissing application for stay under section 10 CPC. The said civil revision petition was opposed by the appellant inter alia on the ground of non-applicability of section 10 CPC to the facts of the present case. By the impugned judgment and order dated 8.9.2003, the High Court stayed the said civil suit no. 1732/05 and directed expeditious disposal of the writ petition filed by the appellant bearing no. 24348/02 within three months; that in the event of the High Court failing to dispose of the said writ petition within three months, liberty was given to the appellant to proceed with the suit up to the stage of final orders, however, the registry was directed not to draw-up the final decree, in case the appellant succeeds, fill the writ petition no. 24348/02 filed by the appellant is fully heard and disposed of by the High Court. Hence, this civil appeal.

7. The short question which arises for determination is whether application dated 20.6.2003 filed by the respondent under section 10 read with section 151 CPC seeking stay of civil suit no.1732/95 in the Court of City Civil Judge, Bangalore, was maintainable.

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.

9. In the present case, the appellant had initiated the disciplinary proceedings against the respondent herein on charges of misappropriation of drugs. In the said disciplinary proceedings, the respondent was found guilty of alleged misappropriation of drugs. On the basis of the findings arrived at in the disciplinary enquiry, the respondent herein was removed. The extent of the loss suffered by the appellant, as found in the disciplinary enquiry, was Rs. 1, 79,668.46. Being aggrieved by the order of dismissal, the respondent moved the Labour Court. On 29.10.2001, the Labour Court passed an award setting aside the order of removal dated 12.4.1993. Being aggrieved, the appellant instituted writ petition no. 2434/02. The appellant has also instituted civil suit no. 1732/95 for recovery of the loss suffered by it to the tune of Rs. 1, 79,668.46 with interest. Thus, as can be seen from the above facts, both the proceedings operated in different spheres. The subject matter of the two proceedings is entirely distinct and different. The cause of action of the two proceedings is distinct and different. The cause of action in filing the said suit is the loss suffered by the appellant on account of the shortage of drugs. On the other hand, in the said writ petition no. 24348/02, the management has challenged the award of the Labour Court granting reinstatement of the respondent.

10. As stated above, section 10 CPC is referable to a suit instituted in a civil Court. The proceedings before the Labour Court cannot be equated with the proceedings before the Civil Court. They are not the Courts of concurrent jurisdiction. In the circumstances, section 10 CPC has no application to the facts of this case.

11. In the impugned judgment, the High Court has observed that since the writ petition no. 24348/02 filed by the appellant against the award of the Labour Court was pending in the High Court and since the High Court was superior to the Civil Court, it was desirable to stay the passing of the decree by the Civil Court. At this stage, it may be mentioned that the respondent applied for stay of the trial pending in the City Civil Court, Bangalore under section 10 read with section 151 CPC. Since the scope of the writ petition filed by the management was entirely distinct and separate from the suit instituted by the management in the Civil Court, we are of the view, that, the High Court had erred in directing the trial Court not to proceed with the drawing up of the decree.

12. In the case of Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal reported in it

has been held that inherent jurisdiction of the Court to make orders *ex debito justitiae* is undoubtedly affirmed by section 151 CPC, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code. Where the Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive. In the present case, as stated above, section 10 CPC has no application and consequently, it was not open to the High Court to bye-pass section 10 CPC by invoking section 151 CPC.

13. Before concluding, we may clarify that we have not gone into the merits of the two cases and observations made herein constitute reasons in support of this judgment and such observations will neither bind the trial Court in the pending civil suit no. 1732/95 nor the High Court in the pending writ petition no. 24348/02. All questions on merit are expressly kept open. Nothing we have stated in this judgment will affect the rights of the parties.

14. Subject to the above, the appeal is allowed. The impugned judgment and order of the High Court is set aside. In the facts and circumstances of the case, there will be no order as to costs.