

**CASE COMMENT: NATIONAL INSTITUTE OF MENTAL HEALTH AND  
NEUROSCIENCES v. C. PARAMESHWARA**

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**Abishek James\* Alina Haris Babu\***

**[AIR 2005 SC 242]**

In The Supreme Court of India

**BENCH: A PASAYAT, S KAPADIA**

**APPELLANT: NATIONAL INSTITUTE OF MENTAL HEALTH AND  
NEUROSCIENCES**

**RESPONDENT: C. PARAMESHWARA**

**RELEVANT SECTION: SECTION 10 OF CIVIL PROCEDURE CODE, 1908**

**DATE OF JUDGEMENT: 13 DECEMBER, 2004**

## **INTRODUCTION**

Section 10 of the Civil Procedure Code is based on the principle of Res Sub Judice which means under consideration. Res Sub Judice is preventing the Courts having concurrent jurisdiction from trying two parallel suits at the same time in respect of the same matter in issue. This Section avoids recording conflicting findings on issues that are directly and substantially in issue in a previously instituted suit. The basic test determining Section 10 is whether the findings of the original suit would be deemed conclusive in the later suit. When the entire subject matter of both suits is similar then Section 10 is applicable. The expression "the matter in issue is directly and substantially in issue" in the already instituted suit is the necessary phrase in Section 10. Instead of the phrase "incidentally or collaterally in issue," the phrase "directly and substantially in issue" has been adopted in this section. Thus, Section 10 would only be applicable if the subject matter of both suits remained the same, making each proceeding's entire subject matter identical.

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## **BRIEF FACTS OF THE CASE**

C. Parameshwara was appointed as a senior pharmacist in NIMHANS (National Institute of Mental Health and Neurosciences), Bangalore in the year of 1985. Later in 1988, he was alleged for misappropriation of drugs which costs nearly Rs. 1,80,000. The inquiry officer carried out a thorough investigation and submitted his findings in 1993. In the enquiry report, it was stated that Parameshwara as a senior pharmacist in NIMHANS was responsible for the shortage of drugs to the extent of Rs. 1,80,000. The director of NIMHANS issued a show-cause notice to Parameshwara. Later the Disciplinary authority removed Parameshwara from the service and directed him to reimburse the pecuniary loss suffered by him. Parameshwara moved to the Labour Court against this decision.

Parameshwara failed to repay the amount and NIMHANS approached the City Civil Court, Bangalore seeking a decree to reimburse the loss of Rs.1,80,000 with interest. The suit was filed on 23/12/1995 [Civil Suit No. 1732of 1995].On October 29, 2001, Labour Court set aside the order of removal by the disciplinary authority of NIMHANS and ordered the reinstatement of Parameshwara with continuity of employment but without back wages. Aggrieved by the award of the Labour Court, NIMHANS filed a Writ Petition in the High Court of Karnataka. High Court stayed the operation of the order passed by the labor court against NIMHANS. C. Parameshwara filed an application under Section 10 of CPC read with Section 151 of the Civil Procedure Code in suit No 1732/95. C Parameshwara herein sought a stay of the suit in City Civil Court till the disposal of the writ petition. The application for a stay of a suit filed by Parameshwara was rejected by the City Civil Court, Bangalore. Parameshwara filed Civil Revision Petition before the High Court of Karnataka challenging the order of the City Civil Court. High Court further stayed the Civil Suit No. 1732/95 and directed speedy disposal of the Writ petition filed by NIMHANS within three months. The High Court further stated that if the High Court fails to dispose of the Writ Petition within three months, liberty was given to NIMHANS to continue with the suit up to the stage of final orders. However, the registrar was instructed not to draw up the final decree till the writ petition is fully heard and disposed of by the High Court. Aggrieved by the decision of the High Court, NIMHANS filed an appeal in the Supreme Court.

## ISSUE RAISED

Whether application filed by Parameshwara under Section 10 read with Section 151 Civil Procedure Code seeking a stay of civil suit No. 1732/95 in the City Civil Court, Bangalore, was maintainable.

## JUDGEMENT

The Supreme Court in this case held that the Petitioner (NIMHANS) initiated the disciplinary proceedings against the Respondent (C. Parameshwara) on the charges of misappropriation of drugs in the year 1988. Later Parameshwara was removed from the service on the basis of findings of disciplinary enquiry. Being aggrieved by the order of dismissal, the respondent moved to the Labour Court and Labour Court passed an award setting aside the order of removal by NIMHANS. The appellant challenged the order of the Labour Court in the High Court by instituting a Writ Petition. They also instituted Civil Suit No. 1732/95 for the recovery of the loss incurred by them with interest.

The above facts make it clear that both proceedings operated in separate spheres. The subject matter and cause of action of both proceedings are completely distinct and different. In Civil Suit No. 1732/95, the cause of action is the loss incurred by the appellant on account of the shortage of drugs. On the other hand, the appellant's Writ Petition is challenging the award of the Labour Court granting reinstatement of Parameshwara (Respondent).

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The Supreme Court in its judgement stated that proceedings before the labor court cannot be equated with the proceedings before the Civil Court under Section 10 of CPC. They cannot be regarded as the courts of concurrent jurisdiction. Therefore, Section 10 of CPC does not apply to the facts of the instant case. Since the respondent applied for a stay of the trial pending in the City Civil Court under Section 10 of CPC read with Section 151 and the scope of Writ Petition filed by NIMHANS was entirely distinct and separate from the suit that they instituted in the Civil Court, it was observed that High Court had made a mistake in ordering the trial court not to continue with the drawing up of the decree.

The Court did not consider the merits of the two cases and all questions on merit are expressly kept open. The Court only considered whether the judgement made by the High Court of Karnataka for the stay of Civil Suit under Section 10 read with Section 151 is valid

or not. The Supreme Court of India in the above case set aside the judgement of the High Court and allowed the appeal.

## **RATIO**

Justice A Pasayat and Justice S Kapadia have clearly interpreted Section 10 of CPC in this case law. Section 10 of CPC declares that no court should proceed with the trial of any suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties and the court before which the previously instituted suit is pending is competent to grant the relief sought.<sup>1</sup>In the above case, the respondent filed a suit in the High Court of Karnataka under Section 10 of CPC read with Section 151. One case is considered by the Labour court which deals with the reinstatement of the respondent to the services and another suit deals with the reimbursement of loss suffered by the appellant in the City Civil Court. The Court held that the proceedings before the Labour Court cannot be equated with the proceedings before the Civil Court. They cannot be considered as the courts of concurrent jurisdiction.

From the facts of the above case, it is clear that Section 10 of CPC is not applicable in the above case because the suit is considered by the courts of different jurisdictions and the subject matter is not the same. Therefore, the above suit does not fulfil the requirements of Section 10 of CPC and the 'Stay of Suit' is not applicable. The main purpose of Section 10 is to protect a person from the multiplicity of proceedings and to avoid a conflict of decisions<sup>2</sup>. In the present case, there is no chance of a conflict of decisions. The subject matter in both case is different and the decision of a suit does not have any impact on the other judgement. The reason behind this decision is that all the conditions of Section 10 are not fulfilled in the particular case and hence the principle of Res Sub Judice is not applicable.

## **ANALYSIS**

In order to invoke section 10 of CPC, the following requirements have to be satisfied:<sup>3</sup>

- There should be an existence of suits, one of which is previously filed and the other suit which is subsequently instituted.

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<sup>1</sup>Indian Bank v Maharashtra State Coop. Marketing Federation Ltd, AIR 1998 SC 1952

<sup>2</sup> S.P.A Annamalay Chetty v B.A Thornhill, AIR 1931 PC 263

<sup>3</sup>C.K TAKWANI, Civil Procedure Code with Limitation Act,1963, EBC Publishing House (Eighth Edition) 2017

- Both of these suits have to be instituted before the same court.
- The issue of consideration in the present suit must be directly or substantially the same as in the previous suit.
- The parties in the previous suit and the subsequent suit must be the same.
- The question of title, in both the previous and the subsequent suit must be similar.

In the above case, the subject matter and cause of action of the two proceedings are entirely distinct and different. Section 10 of CPC would apply only if there were the 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. The Civil Suit filed by the Appellant in the City Civil Court is to reimburse the loss suffered by them and the Writ Petition filed in the High Court by the appellant is against the order of the Labour Court which allows the reinstatement of the Respondent into the services. The Subject matter in both cases is not identical and hence Section 10 of CPC is not applicable.

In the case of *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*, it was held that Section 151 of the Civil Procedure Code clearly affirms the Court's inherent authority to issue orders *ex debito justitiae*. However, such authority cannot be used to invalidate the Code's provisions. When the Code specifically addresses a matter, the provision should often be taken as exhaustive. Because Section 10 of the CPC is not applicable in the aforementioned instance, the High Court was not permitted to circumvent Section 10 of the CPC by using Section 151 of the Civil Procedure Code.

In the case of **Mrs. Uma Hada v Mr. Sunil Gupta**<sup>4</sup>, the court held that Section 10 of CPC would only apply if there were the identity of the matter in issue. It states that Section 10 of CPC would be only applicable if the whole subject matter in both proceedings is identical.

In the case of **E. Laxmi Fruit Co v Gaiinda Ram & Co**<sup>5</sup>, the plaintiff filed a suit against the respondent for a rendition of the account at Dabwali. Later the Respondent filed a suit for recovery of the Sum Rs. 8301 against the petitioner in Delhi. The Petitioner filed a suit under Section 10 of CPC stating that both Suits are of the same subject matter. The trial court refused to stay the suit and hence he filed a revision petition.

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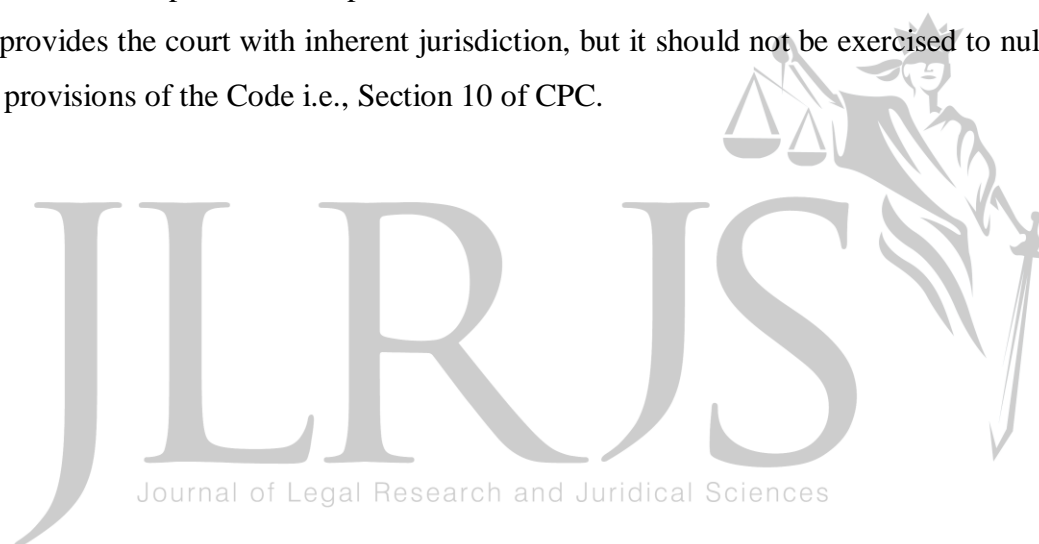
<sup>4</sup> CS(OS) 339/2020, High Court of New Delhi

<sup>5</sup> 1983 (4) DRJ 221

The Court in this case held that the cause of action in the two suits may be different and the matter in issue in the two suits may be substantially the same. For the stay of the suit under Section 10 of CPC it is not necessary that the two cases should be identical, and it is enough that if the matters in issue both are substantially the same.

Section 10 of CPC clearly states that “the matter in issue is directly and substantially in issue in a previously instituted suit”. So, when the matter in controversy is the same, then only section 10 applies. When it is different, the Section has no application. This was held in the case of **Aspi Jal v Khushroo Rustom Dadyburjor**.<sup>6</sup>In the instant case, the matter in issue is not the same in the two suits and therefore there is no application of Section 10 of CPC.

In the present case, the Supreme Court of India has correctly arrived at its decision and the judgment has interpreted the scope of Section 10 of CPC. The court states that Section 151 of CPC provides the court with inherent jurisdiction, but it should not be exercised to nullify the other provisions of the Code i.e., Section 10 of CPC.



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<sup>6</sup> (2013) 4 SCC 333