

\$~3 (Appellate)

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CM(M) 862/2022, CM APPL. 37035/2022 and CM APPL.  
37036/2022

MS HNUNPUII ..... Petitioner  
Through: Mr. Gaichangpou Gangmei and  
Mr. Yashvir Kumar, Advs. with petitioner in  
person

versus

MUNICIPAL CORPORATION  
OF DELHI & ANR. .... Respondents  
Through: Mr. Ratul Sharma, Adv. for  
MCD

**CORAM:**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT (ORAL)**

% **30.08.2022**

1. Ms. Hnunpuii resides in Flat No. B-503, S. B. Apartments, situated opposite Tivoli Garden, Chattarpur, New Delhi-110074 (“the suit property”, hereinafter). Mr. Rajender Ambawat (“Ambawat” hereinafter), owns Shop No. 1 on the ground floor of the same apartment block.

2. Alleging that Ambawat was raising illegal and unauthorized construction on the seventh and eighth floors of the suit property, Hnunpuii instituted CS SCJ 165/2020 against Ambawat, also impleading the Deputy Commissioner, Municipal Corporation of Delhi (MCD) and the SHO, PS Mehrauli. Hnunpuii prayed, in her

suit, that the allegedly illegal and unauthorized construction, being undertaken by Ambawat on the 7<sup>th</sup> and 8<sup>th</sup> floors of the suit property, be directed to be demolished. The prayer clause in the suit read thus:

“It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to:

(a) passing a decree in the nature of permanent injunction whereby restraining the defendant no. 1 from raising illegal and unauthorized construction of the ongoing construction on the Seventh and Eighth Floor (suit property) clearly shown in the site plan Annexure-A over the Plot bearing No. 370 S.B. Apartments, Khasra No. 619/21, Opposite Tivoli Garden, Chhattarpur, New Delhi-110074, and

(b) Pass a decree in the nature of mandatory injunction in favour of the plaintiff and against the defendant no. 2 and 3 thereby directing the defendant no. 2 to demolish the entire illegal and unauthorized ongoing construction at the seventh and eight Floor of the Plot bearing No. 370 S.B. Apartments, Khasra No. 619/21, Opposite Tivoli Garden, Chhattarpur, New Delhi-110074 and direct the defendant no. 3 to initiate a legal action against the defendant no. 1 as warranted under the law.

(c) Pass any other or further order/direction in favour of the plaintiff and against defendants.”

3. MCD, in its written statement filed in response to the aforesaid suit, i.e. CS SCJ 165/2020, alleged that the entire property at 370, S.B. Apartments was unauthorized and booked for demolition.

4. Admittedly taking a cue from the written statement filed by the MCD in CS SCJ 165/2020, instituted by the petitioner against the respondent, the respondent sued the petitioner *vide* CS SCJ 795/2021,

seeking a direction to the MCD to demolish the allegedly illegal construction carried out by the petitioner in Flat No. B-503, S.B. Apartments, in her occupation and for a permanent injunction not to carry out any such illegal construction in future.

5. The suit candidly acknowledged the fact that the provocation for the respondent to sue the petitioner arose from the written statement filed by the MCD in SC SCJ 165/2020, in which the MCD had take a stand that the entire property at 370, S.B. Apartment, was unauthorized.

6. The petitioner moved an application under Section 10 of the Code of Civil Procedure, 1908 (CPC), seeking a stay of trial in CS SCJ 795/2021, instituted by the respondent against the petitioner, asserting that it involved identical and cognate issues, the outcome of which could affect CS SCJ 165/2020, which was already pending.

7. By the impugned order dated 1<sup>st</sup> June 2022, the learned SCJ has rejected the said application. The reasoning of the learned SCJ in rejecting the application is to be found in the following passages in the impugned order:

“The said application under Section 10 CPC has been moved by defendant no. 2 stating that present matter must be stayed as cause of action, in this suit as well as suit bearing no. 165/2020 is the same. However, I do not find much merit in the said application. Suit bearing no. 165/2020 has been filed by the defendant no. 2 against the in this matter alleging that unauthorized construction is being carried by plaintiff in this matter on 7<sup>th</sup> and 8<sup>th</sup> floor of Plot bearing no. 370, SB

Apartments, Khasra No. 619/21, Chattarpur, New Delhi. On the other hand, instant suit has been filed by plaintiff seeking permanent and mandatory injunction on the allegation that defendant no. 2 has raised illegal construction in her fiat bearing no B-503, Plot bearing no. 370, SB Apartment, Khasra No. 619/21, Chattarpur, New Delhi. Hence, cause of action in the two suits are different as they involve different parts of the property and different reliefs are sought in both the suits regarding different parts of the said property. In view of the same, application under Section 10 CPC moved by defendant no. 2 is hereby dismissed. Application stands disposed off accordingly.”

**8.** Learned Counsel for the petitioner submits that as (i) the petitioner and the respondent were at different floors of the same property, (ii) the petitioner and the respondent alleged, against each other, unauthorized construction in respect of the same property and (iii) the very cause of action for the respondent to institute, against the petitioner, Suit 795/2021 was, admittedly, the written statement, filed by the MCD in Suit 165/2020, earlier instituted by the petitioner against the respondent, the further trial in Suit 795/2021 was required to be stayed, pending conclusion of Suit 165/2020.

**9.** Having perused both the suits and heard learned Counsel for the petitioner and the MCD and examined the matter, I am unable to subscribe to the view canvassed by the learned Counsel for the petitioner or to see any infirmity in the impugned order, as would justify interference under Article 227 of the Constitution of India.

**10.** It is true that the property of the respondent, forming subject matter of challenge in Suit 165/2020, and the property of the petitioner, forming subject matter of challenge in Suit 795/2021, are

situated on two floors of the same building. It is also true that the allegation of the petitioner against the respondent in Suit 165/2020 and of the respondent against the petitioner in Suit 795/2021, is the same i.e. that the opposite party has carried out unauthorized construction. It is also true that the provocation for filing Suit 795/2021, admittedly, arose from the written statement filed by the MCD in Suit 165/2020, instituted earlier in point of time by the petitioner against the respondent.

**11.** All these factors, however, seen cumulatively, too, do not make out a case for staying the further trial of Suit 795/2021, awaiting Suit 165/2020.

**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.** *National Institute of Mental Health & Neuro Sciences v. C. Parameshwara*<sup>1</sup> 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

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<sup>1</sup> (2005) 2 SCC 256

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 Jal v. Khushroo Rustom Dadyburjor*<sup>2</sup>, the Supreme Court, relying on *National Institute of Mental Health & Neuro Sciences*<sup>1</sup>, 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

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<sup>2</sup> (2013) 4 SCC 333

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*.

**16.** None of these indicia are satisfied in the present case. The cause of action in the Suit 165/2020 is the alleged unauthorized construction carried out by the respondent, whereas the cause of action in Suit 795/2021 is the allegedly unauthorized nature of the construction in which the plaintiff is residing. The subject matter of the two suits is, therefore, correspondingly different. The prayer in Suit 165/2020 is to demolish the construction undertaken by the respondent, whereas the prayer in Suit 795/2020 is to demolish the

petitioner's flat. As such, even the properties forming subject matter of challenge in the two suits are different. The suits are directed against different properties and constructions, owned/undertaken by different persons. Most significantly, perhaps, there is no possibility of the final decision in Suit 165/2020 operating as *res judicata* in Suit 795/2021.

**17.** The mere fact that the MCD may, in both the suits, canvass a stand that the entire property located at 370, S.B. Apartment is unauthorized, or that Suit 795/2021 may be a fallout from the counter-affidavit filed by MCD in Suit 165/2020, cannot justify a prayer for stay of trial in Suit 795/2021 pending conclusion of proceedings in Suit 165/2020.

**18.** Having said that, it is true that both the properties are situated in one building and that the demolition of either property might affect the other. It is also correct that Suit 795/2021 is apparently a counterblast to Suit 165/2020. The parties, who are legally at war with each other, namely, Hnunpuii and Ambawat, are also the same in both the suits. A case may, therefore, be made for consolidation of the suits and their trial by one Court. That, however, would be a call which the Courts seized of the suits would have to take, either *suo moto* or on an application of either of the parties.

**19.** The rejection, by the impugned order dated 1<sup>st</sup> June 2022 of the learned SCJ, of the petitioner's application under Section 10 of the CPC, therefore, calls for no interference.



20. The petitioner is also aggrieved by the direction, in the order dated 1<sup>st</sup> June 2022, calling on the SDMC to file a status report as to why, despite an earlier report of the SDMC that the property No. B-503, S.B. Apartments, of the petitioner Hnunpuii was unauthorized, no fresh steps were taken against the said property, for its demolition. Learned Counsel for the petitioner expresses an apprehension that the aforesaid direction of the learned SCJ might galvanize the MCD into proceeding to demolish the petitioner's flat at B-503, S.B. Apartments.

21. To my mind, there can be no question of demolishing any property on the ground that it is unauthorized, until and unless the person owning the property and/or in possession of/residing in the property, are given an adequate opportunity of hearing and due principles of natural justice are complied with.

22. It is also no answer to compliance with the principles of natural justice to contend that, if an opportunity was granted, the persons affecting would not have had any defense to offer. This is the position in law since the time of *Olga Tellis v. Bombay Municipal Corporation*<sup>3</sup>.

23. As such, while the learned SCJ cannot be interdicted from calling for a status report, it is clarified that the learned SCJ would ensure that any action against the petitioner's property is undertaken only after the compliance with the principles of the natural justice, especially as the prayer for demolition of the petitioner's property is presently being considered by her in CS SCJ 795/2021 instituted by

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<sup>3</sup> (1985) 3 SCC 545

the respondent. It goes without saying that if, even while the suit is pending, the petitioner's property is demolished, nothing would survive for adjudication in the suit. These aspects are required to be borne in mind by the learned SCJ while proceeding ahead in the suit.

**24.** The petition, along with all pending applications, stands disposed of in the above terms.

**AUGUST 30, 2022**  
*r.bararia*

**C. HARI SHANKAR, J.**

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