

BY

Dr. Amit Gopinathan

Guest Faculty
(Institute of Law)
Jiwaji University Gwalior (M.P.)

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Sub: THE CODE OF CIVIL PROCEDURE

Unit-1

Topic- Stay of suit.- (Section 10):

- 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.
- 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.

Stay of suit: Res Sub Judice

- Stay of suits where things are under consideration or pending an adjudication by a Court.
- The object of the section is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject matter and the same relief.
- Stay of suit prevented the multiplicity of suits and the Court as well as parties be saved of inconvenience.
- It is also necessary to obviate the possibility of conflict of decisions made through two contradictory decrees in respect of same subject matter between the same parties.
- What is contemplated by the provisions of this section is that institution of the subsequent suit is not barred though the trial there of may not be proceeded with if certain conditions are fulfilled.
- Section 10 contemplates only stay of proceedings and not the dismissal of the suit.
- Under Section 10 the Court can stay merely trial of suit. Stay of suit Under Section 10 cannot be a ground for refusal to entertain an application for appointment of a receiver.
- This section does not preclude a Court from passing interim orders such as grant of injunction or stay etc.

Conditions for the applicability of Section

For application of the provisions of Section 10 following conditions must be fulfilled:

- There must be two suits, one previously instituted suit and the other subsequently instituted.
- The matter in issue in subsequent suit is also directly and substantially in issue in a previously instituted suit.
- Both the suits must be between the same parties or their successors;

The previously instituted suit must be pending-

- In the same Court in which the subsequent suit is brought or
- In any other Court in India, or
- In any Court beyond the limits of India established or continued by the Central Government, or
- Before the Supreme Court;
- The court in which the previously instituted suit is pending must be a Court of jurisdiction competent to grant the relief claimed in the subsequent suit and

The parties must be litigating under the same title in both the suits.

- When a suit has been instituted with the purpose of preventing the trial of such a suit (which has subsequently been instituted in another Court)
- When it is vexatious or frivolous
- When it is in violation of contractual obligation (which says that a suit will be instituted in another court).
- When it is malafide. A court under its inherent power can refuse the stay of a subsequent suit on the ground that the institution of former suit is abuse of the process of the court and no advantage could be taken of Section 10.

Stay of suit applicable when

- Same Parties
- Matters in issue must be same
- Suit must be pending

Effect of Contravention

- ❖ The Section enacts a merely a rule of procedure, which can be raised with the consent of the parties.
- ❖ What is barred under the section is trial and not institution of subsequent suit.
- ❖ If the parties waive their right under the section and ask the court to proceed with the subsequent suit.
- ❖ they cannot afterwards question the validity of proceedings.

As regards effect of contravention, a decree passed in contravention of Section 10 is not a nullity and cannot be disregarded in execution proceedings.

Exception to the Rule of Res Sub Judice

- Suit Pending in a Foreign Court
- Summary Suit
- Interim order