

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

Misc. Petition No.744 of 2022

Rakshabai & Others

Vs.

Kunjbihari & Others

APPEARANCE

Shri Rohit Bansal - Advocate for the petitioners.

Shri Pradeep Shrivastava - Government for the respondents.

Reserved on : **09/01/2025**
Delivered on : **30/1/2025**

*This petition having been heard and reserved for orders, coming on for pronouncement this day, the **Hon'ble Shri Justice Milind Ramesh Phadke** pronounced/passed the following:*

ORDER

The present petition, under Article 226/227 of the Constitution of India, has been filed by the petitioners against the order dated 30.10.2021 passed by Fourth Civil Judge, Class II, Sheopur in Case No.COS No.5-A/2015; whereby, an application preferred by the petitioners/defendants under Section 151 of the Code of Civil Procedure, 1908 for stay of the present suit in lieu of earlier a Civil Suit No.10-A of 2015 for specific performance of contract and permanent injunction preferred by their father against present respondent No.1 and 06 others before the Second Additional District Judge, Sheopur which though was dismissed vide judgment and decree dated 07.11.2016 but

there is an injunction granted in favour of the petitioners in first appeal preferred against the said judgment and decree before this Court; thus, in wake of the aforesaid pendency of the litigation between the parties with regard to same subject matter, the prayer for staying of the present suit was made, which was rejected.

2. Short facts of the case are that on 16.07.2010, father of the petitioners, Sukhlal Jangam had instituted a Civil Suit No.10-A/2015 (new) for specific performance of an agreement to sale and permanent injunction against respondent No.1/Kunjbihari and 06 others, before second Additional District Judge, Sheopur which was dismissed vide judgment and decree dated 07.11.2016; against which, father of the petitioners Sukhlal Jangam had preferred a First Appeal No.215 of 2016 before this Court, which was admitted on 20.02.2019 and an injunction granted in favour of the petitioners on 30.11.2016 has been continued till disposal of the appeal vide order dated 20.02.2019 and the said appeal is pending before this Court. During pendency of the first appeal, as father of the petitioners i.e. Sukhlal Jangam had expired, therefore, names of the petitioners alongwith their sisters, namely, Sunita Bai, Nirmala Bai & Anita were substituted in his place, but sisters were not made party in the present civil suit. On 24.03.2015, the present respondents had instituted a Civil Suit No.5-A/2015 for eviction and arrears of rent against the petitioners. In the aforesaid suit, the petitioners had already filed written statement denying existence of relationship of landlord and tenant and taking the similar stand taken in the previous suit prayed for dismissal of the suit. On the basis of pleadings of the parties, learned trial Court framed issues and fixed the case for evidence of the respondents. At the time of preparation of the

case for evidence, it revealed to the petitioners that in both the civil suits, common question was involved as the property as well as the parties were the same, therefore, the present application under Section 151 of CPC for deferring of hearing of present civil suit came to be filed. In reply, the respondents had contended that since the subject matter of both the civil suits are different, the application deserved to be rejected. Learned Trial Court after hearing the parties had dismissed the application. Hence, the present petition.

2. Learned counsel for the petitioners while placing reliance on the judgments passed by the Hon'ble Apex Court in the matters of **Arjunlal Bhatt Gothani & Others Vs. Girish Chandra Dutta & Another** reported in **AIR 1973 SC 2256** and **R. Kanthimathi Vs. Mrs. Beatrice Xavier** reported in **AIR 2003 SC 4149** as well as the orders passed by this Court in the matters of **Dayaram vs. Omkar** reported in **2000 (II) MPWN 154** and **Kalisah Raikwar v. Omprakash** reported in **2013 (III) MPWN 68**, had argued that once there is an agreement to sale between a landlord and a tenant, the old relationship of any kind comes to an end and even after the cancellation of such agreement to sale, the status of tenant is not restored as such. In other words, on the date of execution of the aforesaid agreement to sale, the status as that of landlord and tenant changes into a new status as that of a purchaser and a seller and though as on date, the suit for specific performance of the contract between the parties had been dismissed but in First Appeal, there is an injunction granted in favour of the petitioners and in the said suit, the issue with regard to shop given on rent was also raised by the present respondent No.1 which was held not to be proved vide issue No.5 and further while discussing issue No.10, which was in relation to

whether the said agreement to sale was null and void was held not to be proved which was the prayer at the instance of the present respondent No.1, thus, when the issue with regard to landlord and tenant relationship was already an issue raised by present respondent No.1 in the suit preferred by the father of the petitioners for specific performance of contract, the present suit, which is in relation to eviction of the petitioners/defendants is required to be stayed.

3. It was further argued that in the earlier suit, the relief claimed therein was with regard to specific performance of a contract and the first appeal of the said matter is pending before this Court and if the petitioners succeed in that appeal, they would be declared to be entitled to get the contract for sale executed and thereafter, would become title holder of the property and the said finding will then operate as *res judicata* between the parties and in that event, the petitioners cannot be treated as tenants nor respondent No.1/plaintiff can be treated as owner of the property; thus, once the provisions of Section 10 of CPC are attracted, the present suit deserves to be stayed till decision of the first appeal.

4. On the basis of the aforesaid argument, it was prayed that since the learned Trial Court erred in rejecting the application under Section 151 of CPC, therefore, the present petition deserves to be allowed and while setting aside the order impugned herein, proceedings in the suit are required to be stayed.

5. On the other hand, learned counsel for the respondents while placing reliance on the judgment passed by the Hon'ble Apex Court in the matter of **My Palace Mutually Aided Co-operative Society Vs. B.Mahesh & Others** reported in **2022 LiveLaw (SC) 698** has argued

that the application under Section 151 of CPC was rightly rejected by the learned Trial Court, as the said Section is not a substantive provision that confers the right to get any relief of any kind, rather it is a mere procedural provision which enables a party to have proceedings of a pending suit conducted in a manner that is consistent with justice and equity and as the law on this issue stands crystallized to the effect that the inherent powers enshrined under Section 151 CPC can be exercised only where no remedy has been provided for in any other provision of CPC and when specific provision for staying of a pending suit in lieu of earlier suit on similar cause of action between the same parties has been decided by a Court is provided, the said application was not maintainable; thus, invoking the inherent powers of the Court under Section 151 of the CPC cannot be used in conflict of any other existing provision or in case remedy has been provided for by any other provision of CPC.

6. It was further argued that the prayer for stay of the present suit has been made by the petitioners on the ground that on earlier occasion, similar suit was fought between the same parties for the same cause of action which is not true, as the earlier suit was for specific performance of a contract which was dismissed, against which a first appeal is pending and the present suit is for eviction under the provisions of M.P. Accommodation Control Act, though between the same parties, but on a different cause of action, therefore, even otherwise, if the said application is treated to be under Section 10 of CPC, the same is not maintainable, as no provision of Section 10 of CPC is attracted herein.

7. On the aforesaid premise, it was prayed that the present petition be dismissed.

8. Heard counsel for the parties and perused the record.
9. The averments made by the petitioners in the application filed under Section 151 of CPC are as under:

"अवेदनधर 151 ज.वे.

मन्यत्र महेदय

- 1- यह कि वदे ने प्रतिवे के विरुद्ध वद पेश करके वदे गस्त भक्त क बजे मंग है प्रतिवे वदे क विरुद्ध नहीं है।
 - 2- यह कि वदे के विरुद्ध प्रतिवे क वदस्त भक्त के सम्बन्ध में अदालत के विशिष्ट पत्र क वद चल रहा है जे म० उच्च न्यायलय में प्रथम अपील नं० 215/2016 पर दर्ज होकर विदित भक्त के बजे के सम्बन्ध में दिनांक 30.11.2016 में स्थिति यथावत बनाये रखे क आदेश परित किय थ इस आदेश के म० उच्च न्यायलय ने फुल बतकर आदेश दिनांक 20.02.2019 द्वारा अपील क अंश 39 स्ल 1 व 2 ज.वे. क अवेदन स्वीकार करके अपील के अन्तिम निष्कर्ष तक विदित भक्त के बजे के सम्बन्ध में यथास्थिति बनी रहेगी। क्येकि बजे के सम्बन्ध में यथा स्थिति है इस कारण मामले में कार्यवृत्ति चलू रखन आवश्यक है।
- अतः प्रर्थन है कि मन्नीय उच्च न्यायलय में लम्बित अपील के निष्कर्ष तक उक्त प्रकरण के कार्यवृत्ति स्थगित रखी जाय।"

10. From bare perusal of the application under Section 151 of CPC, it could be seen that a simple prayer has been made therein in lieu of order of injunction passed by this Court in First Appeal No.215 of 2016 that the proceedings under the present suit which is for eviction, be stayed.
11. Nowhere in the application, ingredients of Section 10 of CPC have been made or raised. In the entire application, it has not been stated that since in the earlier suit which was though with regard to specific performance of contract between the parties, the issue with regard to tenancy was also dealt with and as the same has already been

decided by a competent Court and also since there is an injunction in the first appeal with regard to possession, the present suit for eviction till the pendency of First Appeal, deserved to be stayed rather a limited prayer has been made therein that since there is an injunction granted in favour of the petitioners, the present proceedings of the suit be stayed.

12. The judgments cited above by the counsel for the petitioners are in relation to Section 10 of CPC, which according to this Court in the present case cannot be said to be applicable.

13. From the arguments as has been raised by the counsel for the petitioners, it seems that entire focus is on the provisions of Section 10 of CPC and when that is the case in the light of the judgment of the Hon'ble Apex Court in the matter of **My Palace Mutually Aided Co-operative Society Vs. B.Mahesh & Others** (*supra*), the said application cannot be said to be maintainable, as in the said judgment, it has been held that the inherent powers enshrined under Section 151 CPC can be exercised only where no remedy has been provided for in any other provision of CPC. Further, it has been held that Section 151 CPC is not a substantive provision that confers the right to get any relief of any kind rather it is a mere procedural provision which enables a party to have the proceedings of a pending suit conducted in a manner that is consistent with justice and equity.

14. Thus, this Court finds that though the learned Trial Court has rejected the application on some different grounds, the said order in the light of aforesaid discussion, does not deserve to be interfered with. However, the petitioners would be at liberty to move appropriate application for seeking appropriate relief as per law and in case, such application is preferred, the same shall be decided by the learned Trial

Court in accordance with law without getting influenced by the order impugned herein as well as the order passed by this Court.

15. With the aforesaid observation and liberty, the present petition is **dismissed** and **disposed of**.

(Milind Ramesh Phadke)
Judge

pwn*