

The Rule of Res Sub Judice (Section 10)

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Introduction

With an enormous number of pending cases, the Indian legal executive is overburdened and faces a distinct absence of assets. In a circumstance like this, when two suits emerging out of similar issues between similar gatherings are brought under the steady gaze of the courts, there will undoubtedly be wastage of assets and negligible prosecution.

The main area of the piece characterizes and clarifies the convention and afterward the remainder of the article is committed to looking at certain particular parts of the hypothesis of res sub judice which is isolated into five unequivocal segments. At long last, we look past the regulation itself so as to obviously comprehend the degree of its application¹

The tenet of res sub judice depends on open strategy which intends to limit an offended party to one case and to forestall the chance of two conflicting decisions by indeed the very same court in regard of the equivalent relief.² The convention has two targets, one is to keep courts of simultaneous locale from at the same time attempting two equal suits between similar gatherings identifying with same issue in issue. Second is to dodge the clashing choices of two skillful courts over a similar issue and furthermore to spare the hour of the court where resulting suit is initiated in a similar issue. Accordingly, the object of this part is to shield an individual from variety of procedures and to maintain a strategic distance from a contention of legal decisions.³

Doctrine of Res Sub Judice

Res sub judice is a latin proverb which is no where found to have been characterized in the Code of Civil Procedure. Res sub judice alludes to an issue pending preliminary and works as a bar to a preliminary of a suit which is pending choice in a formerly initiated suit.⁴ The standard of res sub judice is, hence, bars a preliminary on specific conditions yet not forestall the organization of a resulting suit. The comparable principle is contained in Section 10 of the Code of Civil Procedure, 1908. The heading of Section 10 is "Stay of suit," it doesn't work as a bar to the foundation of the resulting suit. It is just the preliminary of the suit that isn't to be continued with.⁵

Section 10 understands in this manner:

"Section 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 in 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 remote Court doesn't block the Courts in India from attempting a suit established on a similar reason for activity".

Nature of Section 10

Section 10 announces that no court ought to continue with the preliminary of any suit in which the issue in issue is straight forwardly of generously in issue in a formerly organized suit between similar gatherings and the court before which the recently established suit is pending is skilled to allow the alleviation sought.⁶

The standard applies to preliminary of a suit and not the foundation thereof.⁷ it is additionally doesn't block a court from passing interval orders, award of directive or remain, arrangement of receiver⁸ and so on. It, be that as it may, applies to appeals⁹ and revisions¹⁰

Scope of section 10

The extent of the regulation is wide as the arrangements of Sec. 10 of the Code are clear, unmistakable and mandatory.¹¹ A court wherein a resulting suit has been recorded is disallowed from proceeding with the path of that suit in the specific determined conditions. Under Section 10 of the Code of Civil Procedure, no Court will continue with the preliminary of any suit in which the issue in issue is likewise legitimately and significantly in issue in a formerly established suit between similar gatherings, or between parties under whom they or any of them guarantee contesting under a similar title where such suit is pending in the equivalent or some other Court in India having ward to concede the help asserted. This area doesn't examine a personality of issues between the two suits, nor does it necessitate that the issue in issue in the two suits ought to be totally the equivalent or indistinguishable. What the area requires is that the issue in issue in the two suits ought to be straightforwardly and generously the equivalent, that is, the personality required by section 10 is a significant character. There must be a personality of the topic, the field of contention between the gatherings in the two suits should likewise be the equivalent, however the character mulled over and the field of debate thought about ought not exclusively be indistinguishable and the equivalent in each specific, yet the character and the field of discussion should likewise be significantly the equivalent. Where there are extraordinary and autonomous exchanges between the gatherings, a suit qua one exchange can't be stayed when a suit qua second exchange is filed¹²

Object of Doctrine of Res Sub Judice

The object of the standard contained in Section 10 is to forestall courts of con-current ward from all the while engaging and settling upon two equal prosecutions in regard of a similar reason for activity, a similar topic and a similar help. The Policy of law is to keep an offended party to one case, subsequently blocking the chance of two conflicting decisions by indeed the very same court in regard of the equivalent relief.¹³

The watchwords in Section 10 are "the issue in issue 15 straightforwardly and sub stantially in issue in a formerly initiated suit" Hence, when the issue in discussion is the equivalent, at that point just Section 10 applies. At the point when it is unique, the area has no application.¹⁴

The section plans to shield an individual from assortment of procedures and to evade a contention of choices. It additionally intends to turn away burden to the gatherings and offers impact to the standard of res judicata.¹⁵

It is to be recalled that the segment doesn't bar the organization of suit, yet just bars a preliminary, if certain conditions are satisfied. The ensuing suit, in this way, can't be excused by a court, yet is required to be stayed¹⁶

Fundamentals of Section 10 (Doctrine of Res Sub Judice)

Fundamentals to be agreed to before the use of the guideline:

1. There must be two suits one recently established and the other in this manner organized.
2. The issue in issue in the ensuing suit must be legitimately and generously in issue in the past suit.
3. Both the suits must be between similar gatherings or their agents.
4. The recently initiated suit must be pending in a similar court in which the resulting suit is brought or in some other court in Bangladesh or in any court past the constraints of Bangladesh set up or proceeded by the Government or under the watchful eye of the Supreme Court.
5. The Court in which the past suit is founded must have locale to concede the help guaranteed in the resulting suit.
6. Such gatherings must contest under a similar title in both the suits.

In the event that these conditions are satisfied, the resulting suit must be remained by the court where it is pending. It must be recollected that the foundation of the resulting suit isn't 'banished' yet its 'preliminary' as it were. A ultimate choice of the previous suit will work as res judicata in the ensuing suit.¹⁷

This Doctrine can't be applied when the point at issues are particular and diverse¹⁸, or even where there are a few issues in like manner and others are distinctive issues¹⁹ It is

additionally not pertinent between the suits where despite the fact that the gatherings are same, the issues are not the same²⁰.

section 10, notwithstanding, doesn't remove intensity of the court to analyze the benefits of the issue. On the off chance that the court is fulfilled that ensuing suit can be chosen absolutely on legitimate point, it is available to the court to choose such suit.²¹

Test

The test for materialness of Section 10 is whether the choice in a previously organized suit would work as *res judicata* in the resulting suit. On the off chance that it is in this way, the resulting suit must be stayed."²²

²³But the onus is intensely on the individual who argues that Section 10 Code of Civil Procedure is pulled in and the latter suit is to be remained. It isn't just to be built up that the subsequent suit is for a similar alleviation yet in addition to be affirmed that it is on a similar reason for action²⁴

Mandatory Provision

In spite of the fact that Section 10 is rule of method yet it is mandatory²⁵. Accordingly, while holding that the arrangements of Section 10, Code of Civil Procedure are compulsory and the preliminary of a hence established suit will undoubtedly be stayed if any gathering makes a solicitation under the watchful eye of the Court attempting that suit that a formerly founded suit is pending assurance either in the Trial Court, or the principal request or second intrigue emerging there from is pending for choice. Yet, on the off chance that the preliminary of the in this way established suit has continued with no complaint and the equivalent has ended with the conveyance of the Judgment and the arrangement of the announcement of that Court at that point Section 10, Code of Civil Procedure has no pertinence since it just precludes the 'preliminary of the suit and no further²⁶.

Conditions of the Doctrine

There are three fundamental conditions for acquiring the activity of the regulation of *res sub judice* or section 10 of the Code of Civil Procedure, 1908. These are as per the following:

- (1) The issue in issue in the resulting suit is legitimately and significantly in issue in the recently established suit,
- (2) The gatherings in the two suits are the equivalent, and,
- (3) The court in which the principal suit is established, is a court of having purview or capable to allow the alleviation asserted in the along these lines founded suit.

Presently we talk about these fundamentals thoughrollly.

Matters in Issue

For the doctrine to be appropriate the issues in issue ought to be legitimately and considerably identified with the issues in the recently initiated suit. This implies the issues brought up in both the procedures must be indistinguishable. In the above circumstance, the issues brought up in the two procedures are altogether unique. The principal suit founded by An is because of the misfortune endured because of the lack of medications. Then again, the resulting suit depends on work and important restoration of B. Subsequently, the component of res sub judice for example having issues that are legitimately and considerably related isn't satisfied and henceforth, res sub judice would not have any significant bearing National Institute of M.H and N.S v C. Parameshwara,²⁷

Thusly, it follows that for the regulation of res sub judice to apply, issues of the two suits must be straightforwardly and considerably identified with one another.

Facilitation of res judicata

The key test for a suit being hit by the standard of res sub judice is whether the choice of the past suit would go about as res judicata.²⁸

The significant thing to be noted in res sub judice is that solitary the resulting suit is stayed and not the past one. The instance of **GC Care Center and Hospital v. Operation Care Pvt. Ltd.**,²⁹ illustrates this point, wherein, there was an agreement among A and B for the offer of a heartlung machine. Afterward, a contest emerged between the two gatherings because of defective execution of the machine. A initially documented a suit against B at court X, requesting recuperation of the whole sum paid. Accordingly, B documented a suit against A at court Y requesting Rs.20,000 as extraordinary equalization. In A's suit, B took the guard that since both the suits are on comparable issues, A's suit ought to be remained. In any case, court Y held that since A's suit is the primary suit and the resulting suit had issues like the main suit, it is the ensuing suit that is obligated to be stayed, and not the past one. Thusly, applying the standard of res sub judice, it is just the resulting suit that must be remained. (**GC Care Center and Hospital v. Operation Care Pvt. Ltd.**)

In like manner, res sub judice just bars the ensuing suit and not the past one. Just preliminary is banished The standard of res sub judice commands that till the time the **preliminary of the past suit is** going on, just the preliminary of the resulting suit will be stayed and not the suit out and out. So the inquiry that presently emerges is whether an outline suit being the ensuing suit can be banished by res sub judice. As expressed before, the regulation of res sub judice just bars the 'preliminary' of the ensuing suit. In situations where the resulting suit doesn't rely upon a preliminary to be chosen, such suits are not influenced the standard of res sub judice and need not be remained. Since the synopsis suit doesn't require a preliminary by any stretch of the imagination, it would not be remained in spite of there being a past suit being initiated on a similar issue. The establishment of the suit for example recording of plaint isn't banned,

just the preliminary continuing is banished under res sub judice. **Indian Bank v. M.S Co-operation. Advertising Fedn. Ltd.**³⁰ Therefore, S.10 just bars the preliminary of a suit and not the establishment of it.

Hearing of interlocutory order

This can be considered as a special case to the principle of res sub judice. Certain requests can be passed without a preliminary, for example, connection. Thus, such requests are not influenced by res sub judice. Along these lines, the standard of res sub judice just bars the preliminary and doesn't banish the courts from arbitrating upon interlocutory orders[iv], for example, arrangement of beneficiary, directive or connection. **Sennaji Kapuechand v Pannaji Devichand**³¹ As noted over, the resulting suit remained under res sub judice is anything but a dead suit as the court is enabled to arbitrate over interlocutory issues that don't require trial.³²

Suit pending in outside court: Explanation

Clarification to Section 10 gives that there is no bar on the intensity of an Indian court to attempt a consequently initiated suit if the recently established suit is pending in an outside court.

Inherent power to stay

Indeed, even where the arrangements of Section 10 of the Code don't carefully apply, a common court has natural force under Section 151 to remain a suit to accomplish the closures of justice.³³ Essentially, a court has natural capacity to combine various suits between similar gatherings in which the issue in issue is substantially the same.³⁴

Union of suits

Since the fundamental motivation behind Section 10 is to maintain a strategic distance from two clashing choices, a court in a proper case can pass a request for solidification of both the suits.³⁵

Negation: Effect

A pronouncement went in contradiction of Section 10 isn't a nullity, and there front, can't be dismissed in execution proceedings.³⁶ Again, as expressed above, it is just the preliminary and not the foundation of the resulting suit which is banished under this area. Subsequently, it sets out a standard of system, straightforward as can be, which can be postponed by a party.³⁷ Thus, if the gatherings forgo their privilege and explicitly request that the court continue with the subsequent suit, they can't a short time later test the legitimacy of the ensuing proceedings."³⁸

Interim orders

A request for stay of suit doesn't remove the intensity of the court from passing between time orders. Thus, in a stayed suit, it is available to the court to make break orders, for example, connection before judgment, brief directive, beneficiary, revision of plaint or composed state ment, etc.³⁹

Conclusion

Along these lines, the essential object of the regulation of res sub judice is to forestall concurrent procedures on case of same issues in two courts. The arrangement applies where the issue in issue emerging out of two suits are legitimately and considerably same. The test for res sub judice as talked about before is whether an official choice in the past suit would work as res judicata in the resulting suit. The court is enabled to remain the preliminary of the ensuing suit. Notwithstanding, if the preliminary is remained under the standard of res sub judice, it doesn't infer that the suit is totally dismissed. As noted over the court can in any case arbitrate upon interlocutory issues. At last, it is of significance to take note of that this arrangement attempts to abstain from clashing choices and wastage of assets.

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