

Nature, Scope and Objective

The principle of res sub-judice prevents the court from proceeding with the trial of any suit in which the matter in issue is directly or substantially the same with the previously instituted suit between the same parties and the court where the issue is previously instituted is pending has the power to grant the relief sought.

This rule is applicable to the trial of the suit and not the institution. It does not restrict the court from passing interim orders like injunction or stay. However, it applies to revisions and appeals.

The purpose behind this rule is to prevent multiplicity of cases in courts. It is also sought to prevent the plaintiff from getting two separate decisions from different courts in his favour or two contradictory judgements. It also ensures to protect the litigant from unnecessary harassment. The policy of law is to restrict the plaintiff to one legislation, thus obviating the possibility of two conflicting verdicts by one and the same court in respect of the same relief.

Conditions

Section 10 of the Civil Procedural Code, 1908 deals with the conditions required to apply the principle of res sub-judice. The conditions in the process of application of res sub-judice are:

Where the matter in issue is same

Section 10 clearly states that the matter in issue in both the suits must be directly or substantially be the same. In other words there must be two suits one that is previously instituted and another that is subsequently substituted. The issues of both the suits should be the same to get the benefit of this principle, it is not sufficient if only one or two issues are common. In the circumstances where the entire issues are not the same, the court may exercise its power under Section 151 and stay the trial in a subsequent suit or the trial of the suit may be consolidated. The power of courts to stay the trial under Section 151 is discretionary in nature and can be exercised only when there is an abuse of process of court and if it defeats the ends of justice.

According to Indian Evidence Act, 1872 “matter in issue” are of two kinds:

- Matter directly and substantially in issue– Here “directly” means immediately i.e. without any intervention. The word “substantially” implies essentially or materially.
- Matter collaterally and incidentally in issue– It is just contrary to the matter directly or substantially in issue.
- Where the parties in suits are same i.e., the two suits should have the same parties or their representatives.
- Where the title of the suit is same i.e., the title of both the suits for which the parties are litigating should also be same.
- Where the suit must be pending i.e. the former suit must be pending in the court while the latter suit is instituted. The word pending is for the previously instituted suit, where the final decision has not been arrived at.
- In a competent court

Section 10 also specifies that the former suit must be pending before a court which is competent to carry out the trial. If the former suit is pending before an incompetent court, no legal effects can flow from it.

Illustrations:

'X' and 'Y' decide to enter into a contract for the sale of machines. 'X' is the seller and 'Y' is the purchaser. Y defaulted in paying the amount of the sale to X. X first filed a suit for recovery of the entire amount in Bangalore. Subsequent to this, X filed another suit at Bombay High Court demanding Rs. 20,000 as outstanding balance. In X's suit Y took the defence that X's suit should be stayed since both the suits are on similar issue. However, the Bombay court held that since X's first suit and the second suit have similar issues similar to the first suit, the subsequent suit is liable to be stayed.

'P' was an agent in Patna who agreed to sell goods in Odisha to 'M'. 'P' the agent then filed a suit for balance of accounts in Patna. 'M' sues the agent 'P' for accounts and his negligence in Odisha; while the case was pending in Patna. In this case, Patna court is precluded from conducting trial and can petition Odisha Court to direct a stay of proceedings in Patna Court.

The moment the above conditions are satisfied, a court cannot proceed with the subsequently instituted suit since the provisions contained in Section 10 are mandatory and the court cannot exercise its discretion. The order of stay can be made at any stage of the proceedings.

However, Section 10 takes away the power of the court to examine the merits of the case thoroughly. If the court is satisfied with the fact that the subsequent suit can be decided purely on legal point, it is open for the court to decide in such a suit.

Test

The test of applicability for Section 10 is whether the decision in a former given suit would operate as *res judicata* (decided case) in the subsequent suit. If this happens, then the latter suit must be stayed. This can also be inferred from *S.P.A Annamalay Chetty vs. B.A Thornbill*.

Suit pending in foreign court

The explanation clause of Section 10 clearly provides that there is no limitation on the power of an Indian court to try a subsequent instituted suit if the previously instituted suit is pending in a foreign suit. This also means that the cases can be carried on simultaneously in two courts.

Inherent power to stay

The word inherent has very wide meaning which includes an inseparable part of something or an attribute or quality which is permanent and essential. It is something which is intrinsic and attached to a person or object. Therefore, inherent powers are the powers of the courts which are inalienable i.e., something which can be separated or taken away from the courts and they exercise it in order to provide complete justice to the parties.

Even where the provisions of Section 10 do not strictly apply, a civil court has inherent power under Section 151 to stay a suit to achieve justice. Additionally courts can also consolidate different suits between the same parties in which the matter of issue is substantially the same. In **Bokaro and Ramgarh Ltd. vs. State of Bihar and Another** (1962) the matter in issue was

regarding the ownership of a property. The court in this case used its power and consolidated different issues having the same matter.

Consolidation of suits

The objective behind Section 10 is to avoid two contradictory decisions in the same matter by different courts. To overcome this the courts can pass an order of consolidation of both the suits. In the case of Anurag and Co. and Anr. vs. Additional District Judge and Others, it was explained that consolidation of suits is ordered under Section 151 for meeting the ends of justice as it saves the party from a multiplicity of cases, delays and expenses. The parties are also relieved from producing the same evidence at two different places.

Effect of contravention

Any decree passed in contravention of Section 10 is not null and therefore cannot be disregarded completely. It is to be clearly understood here that it is only the trial and not the institution of the subsequent suit which is barred under this section. But this right which is given in favour of parties can be waived by them. Hence, if the parties in a suit decides to waive their rights and ask the court to proceed with the subsequent suit, they cannot afterwards challenge the validity of the subsequent proceedings.

Interim orders

Interim orders are the temporary orders which are passed for a limited duration just before the final order. An order of stay under Section 10 does not take away the power of the court to pass interim orders. Therefore, the courts can pass such interim orders as it thinks fit like attachment of property, injunction etc.