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BRITISH INDIAN CORPORATION LTD.

v.

M/S. RASHTRACO FREIGHT CARRIERS

MAY 7, 1996

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[K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAIK, JJ.]

*Code of Civil Procedure, 1908:*

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*S.10—Stay of suit—Carrier of goods detaining the goods in his custody, and filing suit against the owner thereof for injunction restraining him from taking forcible possession of goods on the ground that a certain amount was due from the owner of goods towards arrears of transportation charges—Subsequent suit by owner of goods against the carrier for recovery of goods—Application by carrier of goods for stay of subsequent suit filed by owner of goods—Trial court dismissing the application, but High Court directing stay of the suit—Held, the claim in the earlier suit is for recovery of alleged dues said to be payable by the owner whereas the subsequent suit is for recovery of goods lawfully entrusted to and unlawfully detained by the carrier—Causes of action are entirely different—There is no common issue directly or substantially in issue in both the suits—High Court erred in staying the later suit.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8995/1996.

From the Judgment and Order dated 26.5.1995 of the Allahabad High Court in Civil Revision No. 528 of 1994.

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P.P. Rao, G.S. Bajpai and S.K. Misra for the Appellant.

H.M. Singh for the Respondents.

The Order of the Court was delivered :

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Leave granted.

We have heard learned counsel on both sides.

The appellant had entrusted to the respondent 147 bales of raw wools worth Rs. 51.48 lakhs as carriers for transportation to Cawnpore Woolen Mills. In spite of taking delivery thereof, the respondent had

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detained the goods in his custody, laid the suit O.S. No. 612/94 in the Civil Court at Kanpur for a permanent injunction restraining the appellant from taking forcible possession of the goods with the allegation that a sum of Rs. 13, 48,817.13 was due from the appellant towards arrears of transportation charges. The interim injunction sought for was initially granted but later on vacated. Ultimately, in appeal, the High Court directed the appellant to give bank guarantee to the tune of the amount purported to be due as pleaded for in the suit. We are informed that the bank guarantee has accordingly been given. The appellant entrusted taking of delivery of the possession of the goods to the carriers-respondent who laid the suit on July 1, 1994 and interim mandatory injunction was sought for and was granted.

These proceedings arise out of an application made under Section 10 CPC on September 19, 1994 seeking stay of the trial in O.S. No. 793/94. The trial court dismissed it, but the High Court in revision has directed stay of the suit. Thus, this appeal by special leave.

Section 10 of CPC envisages that 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. It is seen that the claim of the respondent in the suit No. 612/94 is for the recovery of the alleged dues said to be payable by the appellant-Corporation while the suit of the appellant is for recovery of the goods lawfully entrusted to and unlawfully detained by the respondent. The causes of action are entirely different. There is no common issue directly or substantially in issue in both the suits. The High Court, therefore, committed gross error of law in staying the later suit.

The appeal is accordingly allowed. The impugned order of the High Court dated 25th, May, 1995 is set aside. No costs.

R.P.

Appeal allowed.