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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Delivered on: 12.05.2026

+ **CS(OS) 609/2021**

T. CHOITHRAM FOUNDATION & ORS.Plaintiffs

Through: Mr. Abhimanyu Mahajan, Ms. Amritananda Chakravorty, Mr. Mihir Samson, Ms. Shreya Munoth, Ms. Asawari Sodhi, Ms. Anubha Goel, Mr. Mayank Joshi, Ms. Vaishnavi Prasad and Mr. Khush Aalam Singh, Adv.

versus

SATISH MOTIANI, TRUSTEE & ORS.Defendants

Through: Mr. Gaurav Khanna, Mr. Gautam Barnwal, Ms. Sakshi Attri and Ms. Astha Agrawal, Adv.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J (ORAL)

I.A. 14834/2023 (by defendants under Section 10 CPC seeking stay of present suit during the pendency of RCS/A/1255 of 2021 pending before the Ld. XXVI ADJ, Indore)

1. The present application has been filed by the defendants invoking Section 10 CPC, seeking stay of the instant suit till the adjudication of suit bearing no. RCS/A/1255 of 2021 titled as "*Choithram Charitable Trust & Ors. vs. Satish Motiani & Ors.*" pending before the learned XXVI Additional District Judge, Indore (hereinafter 'Indore Suit') which was instituted prior to the instant suit.
2. It is stated that the two suits pertain to the same reliefs sought with



regard to the same set of trustees appointed to two family trusts i.e. T. Choithram Foundation [“TCF”] and Choithram Chairtable Trust [“CCT”] that were created by a common settler.

3. It is stated that the subject matter in both the suits is exactly same. Not only both the trusts were created by a common settler but they are managed by an identical Board of Trustees.

4. The challenge in both the suits is that defendant nos.2 to 6, who are common in both the suits have been appointed by defendant no.1 to these trusts in violation of the provisions of trust deed, making “the matter in issue” substantially the same across both jurisdictions.

5. It is stated that the cause of action, as laid out in both suits by the plaintiffs, shows that the two suits are largely identical and most events took place on the same dates between the same parties. Further, the pleadings pertaining to both suits are also more or less similar. Moreover, same allegations are made, again by the same parties, with even identical timelines.

6. Mr. Gaurav Khanna, learned counsel for the defendants/applicants, invites the attention of the Court to paragraphs 14 and 17 of the application in support of his submission that the allegations in both suits are identical and the evidence/documents relied upon is similar.

7. He submits that in the two suits, the plaintiffs have relied upon 29 documents that are common to both. He also contends that such identity of facts and documents will lead to conflicting decisions and waste the precious judicial time.

8. Further inviting attention of the Court to para 19 of the application, Mr. Khanna contends that a perusal of causes of action *in juxta* position as



laid out in both suits would show that the two are largely identical and most events have taken place on the same dates between the same parties.

9. He submits that Indore Suit was instituted prior to the Delhi Suit and has been dismissed, though, the plaintiffs have preferred an appeal against the same, which is pending.

10. He further submits that the plaint in the Indore Suit has been rejected *inter alia* on the ground that the suit is barred by limitation, based on plaintiffs' letter dated 27.02.1996, which is a common document in both the suits and shows that the plaintiffs had knowledge of appointment of defendant nos. 2 and 3 as long back as in 1996.

11. He submits that in both the suits, there is challenge to the appointment of defendant nos. 2 and 3 as trustees in two different trusts, therefore, finding of limitation operates as *res judicata*.

12. He further contends that before filing the present application, the defendants/applicants had filed a transfer petition being T.P (C) 1228/2022 before the Hon'ble Supreme Court seeking transfer of the instant suit to Indore to be tried along with Indore Suit. Though, the said transfer petition was dismissed by the Hon'ble Supreme Court *vide* its order dated 26.07.2023, however, the Court was pleased to grant liberty to the defendants herein to avail of their remedies as provided under Section 10 of CPC. It is in this backdrop that the present application has been filed.

13. In support of his submissions, he places reliance on the following decisions: (i) ***Sankar Padam Thapa vs. Vijay Kumar Dinesh Chandra Agarwal., 2025 SCC Online SC 2194.*** (ii) ***Chitivalasa Jute Mills vs. Jaypee Rewa Cement.,(2004) 3 SCC 85*** (iii) ***Jai Hind Iron Mart vs. Tulsiram Bhagwandas.,1952 SCC Online Bom 66.***



14. *Per contra*, Mr. Abhimanyu Mahajan, learned counsel for the plaintiffs/non-applicants, submits that the two suits, namely, the instant suit and the Indore Suit, pertain to two different trusts.

15. He submits that the instant suit relates to the illegal appointment of trustees in the Plaintiff no. 1 Trust, namely, T. Choithram Foundation, which is a trust registered in New Delhi. On the other hand, the Indore Suit deals with the illegal appointment of trustees in the Choithram Charitable Trust, which is a trust registered in Madhya Pradesh.

16. He submits that the trust deeds of the two trusts are different. Elaborating further, he submits that the trust deed of plaintiff no.1 is dated 24.05.1971 while the trust deed of Choithram Charitable Trust is dated 29.12.1970. Further, various provisions including relating to quorum, number of trustees, notice of meetings and removal of trustees are different in two trust deeds.

17. Furthermore, the Choithram Charitable Trust is governed by the Madhya Pradesh Public Trusts Act, 1951, read with the Madhya Pradesh Public Trust Rules, 1962, whereas the provisions of the said Act are not applicable to the Plaintiff no. 1 Trust, which is registered in Delhi.

18. He submits that the two trusts administer a completely separate set of institutions and properties and there is no overlap between the two. Substantiating this submission, he submits that the plaintiff no. 1 Trust runs schools, whereas the Choithram Charitable Trust runs hospitals.

19. He further contends that separate meetings have been held with regard to the two trusts and the said two trusts maintain separate minutes of meetings, as well as separate attendance registers.

20. He submits that, as per the defendants, only 29 documents are



common to the two suits, which represent only a fraction of the total documents filed by the plaintiffs in the two suits. Elaborating on this submission, he contends that in the instant suit, the plaintiffs have filed a total of 150 documents, whereas in Indore Suit, the documents filed are 108 in number.

21. He further submits that the cause of action in the two suits is different; namely, the discovery of a false FCRA affidavit by defendant no. 4 in July 2021 in the Indore Suit, while the cause of action in the present suit relates to the communication dated 10.07.2021 by defendant no. 1 to plaintiff no. 2.

22. Mr. Mahajan further submits that the fundamental test to attract Section 10 of the CPC is whether the final decision in the first suit would operate as *res judicata* in the subsequent suit.

23. He submits that, in the facts and circumstances of the present case, the dismissal of the Indore Suit would not operate as *res judicata* in the present suit. He further submits that Section 10 of the CPC applies only in cases where the whole of the subject matter of the two suits is identical. In support of his submissions, he places reliance on the following decisions: (i) ***National Health Institute of Mental Health & Neuro Sciences vs. C. Parameshwara.***, (2005) 2 SCC 256 (ii) ***Aspi Jal & Anr. vs. Khusroo Rustom Dadyburjor*** (2013) 4 SCC 33 (iii) ***HQRP Ltd. & Ors. vs. MTP Ltd. & Ors.***, 2022 SCC Online Del 4708 (iv) ***Ruchika Puglani vs. Aasna Digin*** (2022) SCC Online Del 3559 (v) ***Amita Vashist vs. Tarun Vedi.***, 2022 SCC Online Del 2954., (vi) ***Adarsh Sharma vs. Harsh Sharma.***, 2025 SCC Online Del 10749.

24. In rejoinder, Mr. Khanna submits that the fact that the trusts involved in the instant suit, as well as in the Indore Suit, are different is of no



relevance; inasmuch as a trust is not a juristic entity and sues through its trustees. Therefore, since the trustees who are parties to the two suits are common and the subject matter involved is similar, the present suit ought to be stayed under Section 10 of the CPC.

25. Having heard the learned counsel for the parties, it is imperative to note the provisions of Section 10 of the CPC, which govern the staying of a trial in a suit filed subsequently between the same parties, and in which the matter in issue is also directly and substantially in issue; the section reads as under:

*“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] have 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].*

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in 1 [India] from trying a suit founded on the same cause of action.”

(emphasis supplied)

26. The provisions of Section 10 of CPC have been the subject matter of consideration of various decisions of the Hon’ble Supreme Court, as well as, of this Court. Before proceeding to examine the factual matrix of the present case, it would be apposite to advert to some of the decisions.

27. The Hon’ble Supreme Court, in the decision of *National Institute of Mental Health and Neuro Sciences* (Supra), had the occasion to examine the underlying object for the applicability of Section 10 of the CPC. The



Court observed that Section 10 of the CPC applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 of the CPC are “the matter in issue is directly and substantially in issue” in the previously instituted suit. The words “directly and substantially in issue” are used in contradistinction to the words “incidentally or collaterally in issue.” Therefore, Section 10 of the CPC would apply only if there is an identical matter in issue in both the suits, which means that the whole of the subject matter in both the proceedings is identical. It was further held that the fundamental test to attract Section 10 of the CPC is whether, on a final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. The relevant extract from the said decision reads thus:

“8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “directly and substantially in issue” are used in contradistinction to the words “incidentally



or collaterally in issue”. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical.”

(emphasis supplied)

28. Again, in *Aspi Jal* (Supra), the issue involved was whether a third suit seeking eviction ought to be stayed on the ground that two earlier suits, instituted prior to the said third suit and seeking eviction from the same subject premises, were pending. The Hon’ble Supreme Court observed that in the earlier two suits, the ground of eviction was undoubtedly the same, namely non-user, but it was for a different period; therefore, all three suits were based on different causes of action. Accordingly, the Court held that the provisions of Section 10 of the Code were not attracted so as to warrant the staying of the third suit. The relevant portion of the said decision reads thus:

“11. In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether “the matter in issue is also directly and substantially in issue in previously instituted suits”. The key words in Section 10 are “the matter in issue is directly and substantially in issue in a previously instituted suit”. The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer is in the affirmative, the subsequent suit is not fit to be stayed. However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.



12. As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what “the matter in issue” exactly means? As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where a few of the matters in issue are common and will apply only when the entire subject-matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue. As stated earlier, the eviction in the third suit has been sought on the ground of non-user for six months prior to the institution of that suit. It has also been sought in the earlier two suits on the same ground of non-user but for a different period. Though the ground of eviction in the two suits was similar, the same were based on different causes. The plaintiffs may or may not be able to establish the ground of non-user in the earlier two suits, but if they establish the ground of non-user for a period of six months prior to the institution of the third suit that may entitle them the decree for eviction. Therefore, in our opinion, the provisions of Section 10 of the Code is not attracted in the facts and circumstances of the case.”

(emphasis supplied)

29. Likewise, in *Adarsh Sharma* (Supra), a Division Bench of this Court while dealing with the appeal arising out of the judgment of the learned Single Judge rejecting the application filed under Section 10 of CPC made following pertinent observations:

“14. A perusal of the same would clarify that Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in the aforementioned provision are “the matter in issue and substantially in issue” in the previously instituted suit. The words ‘directly and substantially in issue’ are used in contradiction to the words ‘incidentally or



collaterally in issue’, meaning thereby that Section 10 would only apply if the matter in issue in both the suits is identical or to put simply, that the whole of the subject matter in both the proceedings are indistinguishable.

(emphasis supplied)

30. Now coming to the facts of the case, which need to be tested on the anvil of law expounded in the above-noted decisions, this Court finds that the parties and the reliefs claimed to a large extent are similar; however, the fact remains that both suits pertain to two different trusts. As noted above, the trust involved in the present suit admittedly, is the T. Choithram Foundation, which is registered in New Delhi, as per the certificate of registration of trust deed dated 24.05.1971, whereas the trust involved in the Indore Suit is the Choithram Charitable Trust, which is a registered trust in the State of Madhya Pradesh, *vide* trust deed dated 29.12.1970.

31. Further, the Choithram Charitable Trust is governed by the Madhya Pradesh Public Trusts Act, 1951, read with the Madhya Pradesh Public Trust Rules, 1962, which Act and Rules are not applicable to the plaintiff no. 1 Trust.

32. Notably, the trust deeds of both trusts are also different, and various provisions contained therein relating to the quorum, number of trustees, notice of meetings, and removal of trustees are distinct. Further, the registered address of the two trust as mentioned in the respective Trust Deed are also distinct. The said distinction is clearly borne out from the following clauses of the respective Trust Deed of the two trust:

“TRUST DEED OF T.CHOITHRAM FOUNDATION

5.(a)

xxx

xxx

xxx



(b) The office of the said “T.Choithram Foundation” shall be at 3, Parliament Street, New Delhi and/or such other place as the Trustees may decide.

xxx

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xxx

9. (a) The Total strength of the Trustees shall at any time be not less than two or more than seven.

xxx

xxx

xxx

(d) The Trustees shall appoint one of them to act as Chairman of the Board of Trustees (with power of change such appointment), and Shri Thakurdas Choithram Pagarani shall be the first Chairman. The Chairman shall preside at all meetings. In the absence of the Chairman at any meeting the Trustees who may be present at the meeting shall elect a chairman for the meeting.

xxx

xxx

xxx

(g) Two Trustees shall form a quorum for any meeting of Trustees.

TRUST DEED OF CHOITHRAM CHARITABLE TRUST

1. The trust hereby created shall always be known as CHOITHRAM CHARITABLE TRUST and the office of the said Trust shall be a 29, Godha Colony, Indore or such other place or places as the Trustees may decide.

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xxx

3. BOARD OF TRUSTEES CONSTRUCTION ETC.

(i) The total strength of the trustees shall be seven w.e.f. 27-1-72.

xxx

xxx

xxx

(vii) If and so often any of the trustees of these presents shall die or be abroad for more than five years or become bankrupt or insolvent or desire to be discharged or refuse or become incapable or unfit to act in the trust of these presents, it shall be lawful for the surviving or continuing trustees or trustee for the time being and if there be no more surviving or continuing trustee for the refusing or retiring trustee or trustee if willing to act and failing them for the heirs, executors. administrators of



the last surviving trustee to appoint a new trustee or new trustees in the place of the trustees or trustee so dying or being abroad for more than five years or becoming bankrupt or insolvent or desiring to be discharged or refusing or neglecting or becoming incapable or unfit to act in the trusts of the presents and upon every or any such appointment the number of Trustees may be augmented or reduced but so that the total number of Trustees shall not be more than 7 and not less than three, upon every appointment of new trustees or trustee under this clause the trust fund shall if and so far as the nature of the fund or other circumstances shall require or admit be transferred so that the same may be vested in the trustees for the time being and every such new Trustee or trustees may as well before as after the said Trust Fund shall have been so vested in him or them act or assist in the execution of the trusts and powers of these presents and shall have the same powers, authorities and discretions as if he had been originally appointed a trustee of these presents PROVIDED ALWAYS that without prejudice to say other provisions of the law a trustee of these presents shall stand discharged from the office of trustee on his tendering his resignation of his office and on the same being accepted by the remaining trustees of these presents.

xxx

xxx

xxx

5. RULES OF BUSINESS:

The following Rules and Regulations unless and until altered herein in these presents shall apply as to the conduct of the Trustees and the meeting and the procedure of the Trustees:

(A) The Trustees shall appoint one of their number as Chairman of the Board of Trustees. Shri Thakurdas Choithram Pagarani be the first Chairman of the Board and he shall continue to act as such as long as he shall remain a Trustees unless he shall voluntarily resign his office as Chairman. If at any time he ceases to be the Chairman, trustees shall choose some other trustee as the Chairman of Board.

xxx

xxx

xxx

(C) Three Trustees shall form a quorum for any meeting of Trustees.



xxx

xxx

xxx

(G) The notice of the meeting of the Trustees and all communication shall be sent to the Trustees at the address registered for the time being in the office of the Trust.

(H) A Resolution in writing circulated among all Trustees and signed by a majority of them present so India shall be as valid and effectual as if it had been duly passed at a meeting of the Trustees duly called and convened.”

(emphasis supplied)

33. Further, it is not in dispute that the two trusts administer separate sets of institutions. Respondents/applicants themselves in para 12 of the present application has admitted this position wherein it has been delineated in clear terms that plaintiff no. 1 trust runs schools, whereas the Choithram Charitable Trust runs hospitals and colleges offering courses in nursing and paramedical sciences. There seems to be no overlap. Paragraph 12 of the instant application is extracted below for ready reference:

12. Since their inception, both Trusts have flourished in Indore, Madhya Pradesh, and now run several successful and prestigious educational and medical establishments. CCT runs the Choithram Dispensary, the Choithram Hospital & Research Centre, the Choithram College of Nursing, and the Choithram College of Paramedical Sciences. TCF runs four schools being the Choithram School, the Tirathbai Kalachand School, Choithram International, and the Choithram School, North Campus. It is pertinent to note that TCF, though registered in Delhi, functions out of the Choithram Hospital & Research Centre Campus in Indore and all of its operations are confined therein.

(emphasis supplied)

34. Furthermore, the plaintiffs/non applicants in their reply to the present application has made submission that separate meetings are held with regard to the two trusts and that there are separate minutes of meetings, as well as



attendance registers, and the same has not been controverted by the defendants/applicants.

35. With respect to the submission advanced by Mr. Khanna asserting a commonality of 29 documents across both suits, the same was clarified by Mr. Mahajan that out of the total record of 150 documents filed by the plaintiff in the Indore suit and 108 documents in the present suit, merely 29 documents are common, which fact was also not disputed by Mr. Khanna.

36. Clearly, the whole of the subject matter in both suits is not substantially identical. Although the parties are substantially similar and some documents may be overlapping, the core issues remain distinct, *viz.*, the subject matter involved in the two suits pertains to two different trusts, constituted and governed under two different statutes, and based in two different states. Further, the trust deeds of both trusts are different, and various provisions contained therein relating to the quorum, number of trustees, notice of meetings, and removal of trustees are distinct.

37. That apart, in the present suit the challenge is to the status of defendant nos. 2 to 6 as trustees of plaintiff no.1 trust i.e. T. Choithram Foundation, besides seeking declaration to the effect that plaintiff nos. 2 to 5 are the valid trustees of the said trust. In Indore Suit, the relief is somewhat similar but it is with regard to another trust i.e. Choithram Chairtable Trust. This also makes it plain that the cause of action is distinct.

38. In view of the aforesaid facts and circumstances, this Court is of the view that merely because the trustees and a few documents are common to both suits, which otherwise deal with two independent trusts, it is not a ground to invoke Section 10 of the CPC. Needless to add that the staying of the present suit would also not be justified merely because a finding on the



issue of limitation has been recorded in the Indore Suit, warranting dismissal of the said suit. Since the trusts involved in both suits are different, therefore, in the considered opinion of this court the finding as regards limitation in the Indore Suit will not operate as *res judicata* in the present suit.

39. The decisions relied upon by the defendants/applicants are not applicable to the facts of the present case, and the same are distinguishable:

- (i) The reliance placed by the defendants on *Sankar Padam Thapa* (Supra) is misplaced, as the factual matrix of that case is clearly distinguishable from the present matter. Firstly, in the aforementioned case, no reference was made to Section 10 of the CPC. Secondly, unlike the instant case, the main contention therein was whether, in the absence of a Trust being made an accused in a complaint under the NI Act, when a cheque has been issued on behalf of the Trust, the said complaint would be maintainable against the Chairman or a Trustee of the said Trust. To this, the court answered in the affirmative, holding that as a trust does not have a separate legal existence of its own, making it incapable of suing or being sued; therefore, there is no requirement to array the Trust also as an accused.
- (ii) Likewise, the defendants' reliance on *Chitivalasa Jute Mills* (Supra) is of no avail, as the facts in that case are clearly distinguishable from the facts of the present case. In the aforementioned case, the court categorically held that the cause of action alleged in the two plaints therein referred to the same



period and the same transactions. Secondly, it was also observed that the cause of action alleged by one party as a foundation for the relief prayed in one case, is the ground of defence in the other case. In this backdrop, the court held that the issues arising for decision would be substantially common, which is not the position in the present case.

(iii) The decision in *Jai Hind Iron Mart* (Supra) is equally inapplicable. In the said case, the court found that the subject matter in the two suits viz. Calcutta suit and a Bombay suit is the same contract and the decision in Calcutta suit will effectively put an end to Bombay suit, therefore, the Bombay suit was stayed by the Hon'ble Bombay High Court. However, in the present case subject matter in the two suits has been found to be distinct.

40. In view of the aforesaid discussion, there is no merit in the present application and the same is, accordingly, dismissed.

CS(OS) 609/2021, O.A. 42/2022, O.A. 46/2022, CCP(O) 83/2022, I.A. 2102/2022, I.A. 3782/2022, CRL.M.A. 3806/2022, I.A. 5671/2022, I.A. 13838/2022, I.A. 16655/2022, I.A. 17501/2022, I.A. 20241/2022, I.A. 20242/2022, I.A. 20407/2022, I.A. 418/2023, I.A. 15905/2023, I.A. 20381/2023, I.A. 20382/2023, I.A. 21693/2023, I.A. 22386/2023, I.A. 25142/2023, I.A. 245/2024, I.A. 1800/2025, I.A. 22856/2025, I.A. 6258/2026, I.A. 15938/2023 & I.A. 15253/2021

41. List on 05.08.2026.

42. Interim order to continue.

VIKAS MAHAJAN, J

MAY 12, 2026
N.S. ASWAL