

Citation: St. Soldier Journal of Law and Social Science,
Vol.2:1, January, 2026, PP. 124-132

RES SUB JUDICE UNDER CPC: ITS CONCEPT & APPLICABILITY

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The legal principle of "Res Sub Judice," embedded in Section 10 of the Civil Procedure Code, 1908 (CPC) is a doctrine aimed at preventing the multiplicity of litigation involving the same matter. This provision ensures that if a dispute is already pending before a competent court, a parallel proceeding involving the same issue cannot be entertained by any other court. The principle serves to avoid conflicting judgments and promotes judicial efficiency by minimizing the unnecessary use of judicial resources.

Historical Background

The concept of Res Sub Judice has evolved over centuries, from its roots in Roman law to its adoption in various jurisdictions. The concept of Res-Subjudice was adopted in English common law during the 12th century. The Magna Carta, a foundational document of English law, contains provisions related to Res Subjudice. It became a well-established principle in English law, with cases like "**Henderson v/s Henderson**" (1843) and "**Cooke v/s Gill**" (1873). The Code of Civil Procedure (1908), further reinforces the principle of Res Subjudice.

The term "Res Sub Judice" is a Latin word which means "**a matter under judgment**," signifying that a case is still pending and undecided. Historically, the doctrine has been instrumental in maintaining judicial order and consistency. The CPC, enacted in 1908, codified this principle to formalize its application within the Indian judicial framework.

“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 beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court¹.”

Explanation: The pendency of the suit in a foreign court does not preclude the courts in India from trying a suit founded on the same cause of action.

The words “**nocourtshallproceedwiththetrial**” under section 10 makes it clear that institution of suit is not barred by this section, but the trial is. Therefore, the prohibition is on the trial and not the institution of the suit. The later suit can always be brought before the court in which an earlier suit in respect of the same cause of action and subject matter between the same parties is pending. The bar operates when the court proceeds to try the subsequent suit. The provision of section 10 is a general provision applicable to all types of cases.²

Essentials of Section 10

To invoke Section 10 of the CPC, certain conditions must be satisfied:

1. Identity of Matter in Issue:

The matter in issue refers to the subject matter of the dispute, which is the same in both the previously instituted suit and the current suit. “**Matter in issue**” means the entire matter in controversy and not the one of the several issues in the case. The matter in issue in both suits must be directly and substantially the same. The term “directly” means immediately i.e. without any intervention. The word “substantially” implies essentially or materially.

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¹ Section 10 of CPC, 1908.

² Indian Bank v/s Maharashtra State Co-operative AIR 1998 SC 1952

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In **National Institute of Medical Health v/s Parmeshwar**³, a pharmacist was removed from service for misappropriation of drugs. The order of removal was set aside by labour court. The employer challenged the order by filing a writ petition. The employer filed a civil suit for recovery of loss caused to him. Hence an application was moved to stay the suit. The application was held to be not tenable as the subject matter of two proceedings was entirely different. In another case⁴, the Delhi High Court observed that where controversies in two suits are similar, but not substantially the same, subsequent suit cannot be stayed. It was held where the earlier suit was for partition, the subsequent suit for injunction restraining the defendant from interfering with plaintiff's possession over the property received in partition cannot be stayed.

2. **Same Parties or Their Representatives and Same Title:**

The parties in both suits must be the same or represent the same interests. It not only affects the parties to the suit but their privies, persons claiming under them. For application of section 10 identity of the parties is enough. In **Mahanju Prasad v/s Prayag**,⁵ it was held that section 10 does not become inapplicable by reason of addition of a party against whom no separate and substantial issue is raised. The parties must be litigating under the same title in both suits. In a partition suit each party claiming that the suit property is joint and they are co-owners of the same. If that issue is litigated in another suit and decided, it can be concluded that parties are litigating under the same title⁶.

3. **Previously Instituted Suit:**

Section 10 applies only when previously instituted suit is pending, in the same court in which subsequent suit is brought or, in any other court in India or in any court beyond the limits of Indian established or continued by the Central Government or before the Supreme Court. But if the prior suit is pending in the foreign court, Section 10 does not apply. The question arises as to

³ AIR 2005 SC 242

⁴ Sneh Lata v/s Brij Raj AIR 2003 Del, 259

⁵ AIR 1975 Gau.40

⁶ AIR 1977 SC 1268

when a suit is considered to be pending. As a matter of fact, a suit remains pending so long as decree is drawn up. Therefore, until the rights of parties to a suit are conclusively determined by the court by passing a decree, the suit remains pending. In **G.C. Case CentreadHospital v/s O. P. Care Pvt Ltd**⁷, the Supreme Court observed that it is a settled principle of law that under section 10 only latter suit would be stayed under the section, earlier suit would not be stayed. In **Ranje Ram v/s Nand Lal**⁸, it was held that where two suits were instituted by the petitioner and respondent and proceeded simultaneously, but the substituted suit was decided earlier and reached appellant stage, the respondent cannot pray that earlier suit be stayed.

4. **Competent Jurisdiction:**

The previously instituted suit must be pending in a court with competent jurisdiction to grant the relief claimed. In **Minocher Behramjin v/s Hema**⁹, a suit was filed by "A" in the Small Causes Court for the declaration that he was a tenant of B. Later B filed a suit in the City Civil Court for possession on the ground that A was a trespasser and for injunction restraining A from interfering his possession. Trial court of City Civil Court stayed subsequently filed suit under section 10 of the Code. Upon the revision, it was held that although the subject matter of both the suits was substantially the same, the subsequent suit viz, City Civil Court suit, could not be stayed since the earlier court, had no jurisdiction to grant reliefs which are claimed in the subsequent Suit under the presidency Small Causes Courts Act, 1882, or the Bombay Rent Act.

The civil court has limited jurisdiction in service matters. But it is not totally excluded. An order declaring that the dismissal in question was against the principles of natural justice was held by the Supreme Court to be not beyond jurisdiction of Civil courts¹⁰. When a person is an employee of a statutory body, a suit for specific enforcement of a contract of service would be

⁷ AIR 2004 SC 3339

⁸ AIR 2011 HP 35

⁹ AIR 1982 Bom 151

¹⁰ AIR 2008 SC 1315

maintainable. Such cases involve a declaration that the termination was in violation of statutory rules and therefore, the employee is deemed to have continued in service¹¹.

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 substituent suit can be decided purely on legal point, it is open for the court to decide in such a suit.

In, **Gujarat Bottling Co. Ltd. v. Coca Cola Co**¹²., the Supreme Court emphasized that Section 10 applies not only to trial proceedings but also to interlocutory orders. In, **National Institute of Mental Health & Neuro Sciences v. C. Parameshwara**¹³, the Court held that the object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue.

The provisions contained in section 10 are mandatory and no discrimination is left with the court. The order staying the proceedings in the subsequent suit can be made at any stage. When there is a case for the application of section 10, recourse to the inherent power under section 151 is not justified. But where the provisions of section 10 do not strictly apply or the case is not covered by section 10, a civil court has inherent power under section 151 of the code to stay a suit if it considers necessary to do so in the interest of justice and in order to avoid unnecessary harassment to any of the party. However, a stay of suit cannot be sought by invoking inherent powers under section 151 where there is specific provision for that purpose¹⁴.

Objectives of Section 10

The primary objectives of Section 10 include:

¹¹ Rajasthan SRTC v/s Mohar Singh, AIR 2008 2553

¹² 1995 AIR 2372

¹³ AIR 2005 SC 242

¹⁴ ONGC v/s Ganesh AIR 1983 Gau 7

1. **Preventing Multiplicity of Proceedings:**

By staying the trial of a subsequent suit, the provision aims to avoid multiple suits on the same issue, thereby reducing the burden on courts. It may be appreciated that had section 10 not been enacted, the consequences would have been disastrous. The litigants would have been free to file as many suits as they wished on the same subject matter claiming the same relief. The number of suits would have been unlimited without any control or check. The courts would have been flooded with several litigants by the same plaintiff against the same defendant in respect of same cause of action. Section 10 is meant to curb such a situation.

2. **Avoiding Conflicting Judgments:**

It ensures that different courts do not pass conflicting judgments on the same issue, which could lead to confusion and injustice. In **Indian Bank v/s Maharashtra State Cooperative Marketing Federation Ltd**¹⁵, the Supreme Court held that the object of the prohibition contained in section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matter in issue.

3. **Judicial Economy:**

The provision promotes the efficient use of judicial resources by preventing repetitive litigation. By preventing duplicate suits Res - Sub judice helps reduce the workload of courts, allowing judges to focus on other pending cases. It saves time and resources that would be spent on hearing and deciding multiple suits on the same issue. It reduces the economic burden of parties, promoting judicial economy.

The defendant would never have been relieved of litigations and would have endlessly faced a series of civil proceedings in different courts of the country on the same subject matter. There would have been likelihood of one court taking one view and other court taking a contrary view. In practice, Section 10 is invoked through an application by the party seeking a stay of the subsequent suit. The court then examines whether the conditions laid down in Section 10 are met. If satisfied, the court will stay

¹⁵ AIR 1998 SC 1952

the proceedings of the subsequent suit until the previously instituted suit is resolved.

When the provision does not apply:

The provision does not apply in following circumstances:

- a) when the conditions mentioned above are not satisfied.
- b) since, the provision applies only to the suits instituted in a civil court, therefore it has no application to any other proceeding of a different nature than a suit instituted under any other statute.
- c) as for attracting this section, it is necessary that one of the two proceedings must be in a suit, the provision has no application in cases where neither the earlier nor the later proceedings are in a suit.
- d) when either previously instituted or the subsequently instituted suit is not tenable. This provision applies only to those suits which are legally maintainable.
- e) if the suit is pending in a Foreign Court
- f) the rule of res subjudice does not affect the jurisdiction of the court to pass interim orders such as stay, injunction, etc.
- g) it does not apply to Summary suits.

Comparative Analysis

The principle of Res Sub Judice is not unique to India and has parallels in various legal systems:

1. **United States:** The doctrine of "Res Judicata" (claim preclusion) serves a similar purpose by preventing the relitigation of issues that have been conclusively settled. It applies to both federal and state courts. It prohibits relitigation of claims or issues already decided.
2. **United Kingdom:** The principle of "Lis Alibi Pendens" operates to stay proceedings where another action involving the same parties and cause of action is pending in another court. It applies to civil and criminal cases.
3. **Canada:** It is known as "Resjudicata" or "Issue Estoppel". It applies to both federal and provincial courts. It prohibits relitigation of claims or issues already decided.
4. **Germany:** in Germany it is known as, "Rechtskraft". It applies to both civil and criminal cases.

If the matter in issue is found to be the same, the court may:

- a) Stay the proceedings in the current suit until the previously instituted suit is decided.
- b) Dismiss the current suit if the matter in issue has already been decided in the previously instituted suit.

Effect of contravention

Section 10 enacts a mere rule of procedure which can be raised with the consent of Parties. What is barred is trial and not institution of the subsequent suit. However, if the parties waive their right under the section and ask the court to proceed with the subsequent suit, they cannot afterwards question the validity of the proceedings. A decree passed in contravention of section 10 is not a nullity and cannot be disregarded in execution proceedings.

No appeal is permissible against an order of stay passed under section 10 as it is neither a decree nor it is an appealable order.¹⁶ An application for revision against an order of stay under section 10 would lie.

Challenges and Criticism

Despite its importance, Section 10 faces several challenges and criticisms:

1. Delay in Justice: Critics argue that the provision can be misused to cause unnecessary delays by filing multiple suits and seeking stays.
2. Ambiguity in Application: The requirement that the matter in issue be "directly and substantially" the same can be subjective, leading to inconsistent applications by different courts.
3. Limited Scope: Section 10 applies only to suits and not to other proceedings such as arbitration or administrative adjudications, which may also involve similar issues.

Suggestions

To address these challenges, several reforms and suggestions have been proposed:

1. Clarifying the Scope: Legislative amendments to clearly define the terms used in Section 10 can reduce ambiguity and promote uniform application.

¹⁶ P.C Jyath v/s Amrit AIR 1967 Punjab 148

2. Expanding Coverage: Extending the application of Section 10 to include other forms of adjudication, such as arbitration, can further prevent multiplicity of proceedings.

3. Streamlining Procedures: Introducing procedural safeguards to prevent the misuse of Section 10 for causing delays can enhance the efficacy of the provision.

Conclusion

Section 10 of the CPC, embodying the doctrine of Res Sub Judice, is a cornerstone of procedural law in India. It plays a crucial role in ensuring judicial efficiency and consistency by preventing multiple suits involving the same matter. While it has been instrumental in maintaining judicial order, the provision also faces challenges that necessitate careful interpretation and potential reforms. Balancing the objectives of preventing multiplicity of proceedings and avoiding unnecessary delays remains key to the effective application of Section 10.