

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Civil Writ Petition No. 21798/2026
CNR: RJHC010902742026 | URN: CW / 37369U / 2026

Badrilal S/o Shri Bhanwararam, Aged About 61 Years, R/o Subhash Colony, Pipar City, Tehsil Pipar City, District Jodhpur (Rajasthan)

-----Petitioner

Versus

1. Dhokalram S/o Shri Bhanwararam, Resident Of Subhash Colony, Pipar City, Tehsil Pipar City, District Jodhpur (Rajasthan)
2. Smt. Geeta W/o Late Shri Babulal Urf Babuda, Resident Of Subhash Colony, Pipar City, District Jodhpur(Rajasthan).
3. Balveer Singh S/o Late Shri Babulal Urf Babuda, Resident Of Subhash Colony, Pipar City, District Jodhpur(Rajasthan).
4. Gajendra S/o Late Shri Babulal Urf Babuda, Resident Of Subhash Colony, Pipar City, District Jodhpur(Rajasthan).
5. Papparam S/o Late Shri Babulal Urf Babuda, Resident Of Subhash Colony, Pipar City, District Jodhpur(Rajasthan).
6. Smt. Kamala W/o Late Shri Omaram, D/o Late Shri Babulal Urf Babuda R/o Gopi Ka Bera Pipar City Dist. Jodhpur Raj.
7. Smt. Sohani W/o Shri Narsingh, D/o Late Shri Babulal Urf Babuda R/o Rajputon Ka Bera Village Manai Tehsil And Dist. Jodhpur Raj.
8. Smt. Santosh Urf Haudi W/o Shri Shyamlal, D/o Late Shri Babulal Urf Babuda R/o Magra Ki Dhani Village Gudi Tehsil Bhopalgarh Dist. Jodhpur Raj. (Respondents No. 2 To 8 Being The Legal Representatives Of Defendant No. 1 Late Shri Babulal Urf Babuda S/o Shri Bhuraram)
9. Smt. Sukhidevi W/o Shri Jawrilal, Resident Of Amaliya Bera, Near Unchiyarda Bera, Tehsil Pipar City, District Jodhpur (Rajasthan) Defendant No. 3.
10. Smt. Neetu W/o Shri Dharmaram, Resident Of Subhash Colony, Pipar City, Tehsil Pipar City, District Jodhpur (Rajasthan) Defendant No. 4.
11. Omprakash S/o Shri Jhumarram, Resident Of Kevalji Ki

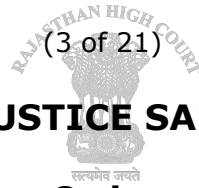


Dhani, Nanan Road, Tehsil Pipar City, District Jodhpur (Rajasthan) Defendant No. 5.

12. Baksaram S/o Shri Vachnaram, Resident Of Village Borunda, Tehsil Pipar City, District Jodhpur (Rajasthan) Defendant No. 6.
13. Pukhraj S/o Shri Sonaram, R/o Chalavaton Ka Bera, Tehsil Pipar City, District Jodhpur (Rajasthan) Defendant No. 7
14. Smt. Geetadevi W/o Shri Sohanlal, Resident Of Sankhla Ka Bera, Pipar City, Tehsil Pipar City, District Jodhpur (Rajasthan) Defendant No. 8.
15. Padamchand S/o Shri Jabarchand, Residents Of Behind Nasrani Cinema, First A Road, Sardarpura, Jodhpur (Rajasthan)
16. Vinit Kumar S/o Shri Jabarchand, Residents Of Behind Nasrani Cinema, First A Road, Sardarpura, Jodhpur (Rajasthan)
17. Navneet Kumar S/o Shri Jabarchand, Residents Of Behind Nasrani Cinema, First A Road, Sardarpura, Jodhpur (Rajasthan)
18. Nagar Palika, Pipar City, Through Its Commissioner, Nagar Palika, Pipar City, District Jodhpur (Rajasthan) Defendant No. 12.
19. Smt. Kaushalya W/o Late Shri Bhagirath, Residents Of Subhash Colony, Pipar City, District Jodhpur (Rajasthan). Plaintiff No. 2 (Legal Representatives Of Late Shri Bhagirath)
20. Km. Monika D/o Late Shri Bhagirath, Residents Of Subhash Colony, Pipar City, District Jodhpur (Rajasthan). Plaintiff No. 2 (Legal Representatives Of Late Shri Bhagirath)
21. Vishnu S/o Late Shri Bhagirath, Residents Of Subhash Colony, Pipar City, District Jodhpur (Rajasthan). Plaintiff No.2 (Legal Representatives Of Late Shri Bhagirath)

-----Respondents

For Petitioner(s)	:	Mr. C.P.Soni
For Respondent(s)	:	Mr. Jai Kishan Bhaiya

**HON'BLE MR. JUSTICE SANJEET PUROHIT****Order**

- 1. Date of conclusion of arguments : 17.09.2026**
2. Date on which judgment was reserved : 17.09.2026
3. Whether the full judgment or only the operative part is pronounced : Full Judgment
4. Date of pronouncement : 29.09.2026

portable

1. Present writ petition has been preferred challenging order dated 27.08.2026 passed by learned Trial Court, whereby the application filed by petitioner-plaintiff under Section 151 CPC was dismissed and the prayer for staying the proceedings in relation to Application No. 32/2023 filed under Order XXXIX Rules 1 and 2 CPC was denied.

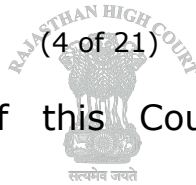
2. Briefly stated, facts germane to present writ petition, as stated by learned counsel for the petitioner, are as under.

2.1 Petitioner herein instituted a suit, being Civil Original Suit No.18/2023, seeking partition and mandatory injunction in respect of the suit land, along with an application under Order XXXIX Rules 1 and 2 CPC, bearing No. 32/2023, seeking temporary injunction.

2.2 During pendency of the suit, an application under Section 39 of the Baratiya Nyaya Sanhita, 2023, read with Section 45 of the Indian Evidence Act, 1872, was filed, praying for examination through FSL of the signatures of defendant No.2 as appearing on the *Vakalatnama*, written statement and the applications filed during pendency of suit. Said application was rejected by learned Trial Court, which order of rejection was challenged by petitioner-plaintiff by way of S.B. Civil Writ Petition No. 20483/2026.



[2026:RJ-JD:45420]



[CW-21798/2026]

2.3 Coordinate Bench of this Court, vide its order dated 20.08.2026, issued notice to respondents and passed an interim order in favour of petitioner, staying further proceedings in Civil Original Suit No. 18/2023.

2.4 Subsequent to the passing of said order dated 20.08.2026, petitioner-plaintiff filed an application under Section 151 CPC before learned Trial Court, stating therein that since further proceedings in the suit had already been stayed by this Court, proceedings in relation to the application filed under Order XXXIX Rules 1 and 2 CPC should also be stayed as said application is part and parcel of the same suit.

2.5 Said application was contested by respondents-defendants on the ground that stay of the suit proceedings would not automatically amount to stay of proceedings in respect of the application filed under Order XXXIX Rules 1 and 2 CPC. It was further submitted that, in view of the directions issued by this Court in another writ petition, namely, S.B. Civil Writ Petition No. 9424/2026, said application was required to be decided in a time-bound manner.

2.6 Learned Trial Court, after considering the submissions of both the parties, dismissed the application vide order dated 27.08.2026, observing that no specific directions had been passed by this Court to stay further proceedings of Civil Miscellaneous Case No. 32/2023, i.e., the application filed under Order XXXIX Rules 1 and 2 CPC. Learned Trial Court also took into consideration the directions issued by this Court in aforesaid writ petition, bearing No. 9424/2026, as to decide said application within a period of 30 days.





2.7 Aggrieved by said order dated 27.08.2026, petitioner has approached this Court by way of present petition.

3. Challenging said order dated 27.08.2026, learned counsel for the petitioner submitted that since the proceedings in relation to the Civil Original Suit No. 18/2023 have already been stayed by this Court vide order dated 20.08.2026, propriety demands that further proceedings in relation to the temporary injunction application should also be stayed, as such application constitutes a part of original suit itself.

3.1 It was further submitted that Section 2(14) of CPC defines an "order" as a formal expression of any decision of Civil Court which is not a decree. Orders are also executable under Section 36 CPC and, therefore, according to learned counsel, if the rights of the parties are allowed to be adjudicated upon under the temporary injunction application, the same would run contrary to the object of granting stay on the suit proceedings itself.

3.2 As regards the effect and applicability of order dated 12.08.2026 passed in S.B. Civil Writ Petition No. 9424/2026 whereby directions were given for expeditious disposal of the temporary injunction application, learned counsel submitted that said order did not operate as a bar to staying of proceedings in respect of the temporary injunction application, as the same was an *ex-parte* order and an application for recalling of said order has already been filed. Learned counsel further argued that order dated 20.08.2026, whereby proceedings in Civil Original Suit No. 18/2023 have been stayed, was passed by this Court subsequent to said order dated 12.08.2026 and, therefore, the same prevails over earlier *ex-parte* order dated 12.08.2026.





3.3 In support of his submissions, learned counsel has placed reliance upon judgments passed by this Court in ***Ravindra Bal Niketan Samiti, Sikar & Ors. v. Smt. Sushila Shrivastava & Anr., AIR 1988 (Raj) 177***, and ***Ayaz Master & Ors. v. Smt. Rehana Mirza & Ors., AIR 2019 (Raj) 154***, as well as interim order dated 07.08.2023 passed in **S.B. Civil Writ Petition No. 10982/2023**.

4. *Per contra*, learned counsel for the respondents submitted that mere stay on further proceedings in Civil Original Suit No. 18/2023 alone cannot be a ground to stay proceedings in relation to the temporary injunction application.

4.1 Learned counsel stated that order dated 12.08.2026 was passed by this Court in S.B. Civil Writ Petition No. 9224/2026, whereby learned Trial Court was specifically directed to decide the pending application for temporary injunction within a period of 30 days, said application having remained pending adjudication for the preceding three years.

4.2 It was contended that, aforesaid writ petition having been finally disposed of, the directions contained in order dated 12.08.2026 could not be said to have been rendered inoperative by interim order subsequently passed in relation to Civil Original Suit No. 18/2023 in another writ petition.

4.3 Learned counsel further submitted that an application seeking recall of order dated 12.08.2026 has though been filed by petitioner; however, no order recalling or staying the operation of said order has been passed by this Court.

4.4 Therefore, according to learned counsel, learned Trial Court committed no error in passing impugned order dated 27.08.2026





and in refusing to stay further proceedings in relation to the application filed under Order XXXIX Rules 1 and 2 CPC.

4.5 In support of his submissions, learned counsel for the respondents has placed reliance upon judgment passed by the Hon'ble Supreme Court in the case of ***Amita Kaushish & Ors. v. Sanjay Kaushish & Ors, (1996) 7 SSC 19*** and ***Indian Bank v. Maharashtra State Co-operative Marketing Federation Ltd., 1998 (5) SCC 69***, as well as the judgment passed by this Court in ***Surendra Sawhney v. Murlidhar & Ors., 2008 (1) DNJ 128***.

5. Heard learned counsel for the parties and perused the material available on record.

6. In the peculiar facts and circumstances of present case, and having regard to the rival submissions advanced by learned counsel for the parties, the following question of law arises for consideration: -

whether an order staying "further proceedings" of a Civil Original Suit, by itself, operates to stay or otherwise denudes the jurisdiction of learned Trial Court to entertain, consider and decide a pending application for temporary injunction filed under Order XXXIX Rules 1 and 2 CPC.

6.1 Undisputed facts of the case are that Civil Original Suit No. 18/2023, seeking a decree of partition and permanent injunction, was filed in the year 2023, along with an application under Order XXXIX Rules 1 and 2 CPC.

6.2 During pendency of said application, S.B. Civil Writ Petition No. 9424/2026 was filed by respondents-defendants before this Court seeking issuance of directions for expeditious disposal of



said application. Vide order dated 12.08.2026, the following directions were passed by this Court while disposing of said petition: -

"2. Having regard to the nature of the grievance and the fact that the application is stated to be pending since the year 2023, the present writ petition is disposed of with a direction to the learned District Judge, Jodhpur District, to consider and decide the aforesaid application, in accordance with law, as expeditiously as possible and preferably within a period of 30 days from the date of receipt of a copy of this order.

3. The petitioner shall cooperate in the proceedings and shall not seek unnecessary adjournments.

4. It is made clear that this Court has not expressed any opinion on the merits of the application pending before the learned Court below, which shall be decided strictly in accordance with law.

5. The writ petition stands disposed of accordingly."

6.3 Subsequently, petitioner preferred S.B. Civil Writ Petition No. 20483/2026, challenging an order passed by learned Trial Court in the main suit, wherein Coordinate Bench of this Court, vide order dated 28.08.2026, passed the following directions: -

"1. Issue notice to the respondent(s), returnable within a period of three weeks.

2. In the meanwhile, further proceedings of Civil Original Suit No. 18/2023 pending before the learned District Judge, Jodhpur shall remain stayed."

6.4 A perusal of afore-quoted orders shows that, vide order dated 12.08.2026, this Court specifically directed learned Trial Court to decide expeditiously the pending application for temporary injunction, bearing No. 32/2023, whereas, by way of order dated 28.08.2026, Coordinate Bench of this Court stayed further proceedings in the original civil suit, bearing No, 18/2023.





It is pertinent to note that no specific direction was passed therein staying the proceedings in respect of pending application for temporary injunction.

6.5 The central premise upon which learned counsel for the petitioner has mounted his challenge is that an application under Order XXXIX Rules 1 and 2 CPC is part and parcel of original suit proceedings, and therefore, once stay has been granted in respect of proceedings in the original suit, it is in itself sufficient ground to stay the proceedings in respect of the temporary injunction application as well.

6.6 In support of his contention, learned counsel for the petitioner has sought to place reliance upon judgments passed by this Court in **Ravindra Bal Niketan Samiti** (supra) and **Ayaz Master** (supra), however, in the considered opinion of this Court, the reliance thus placed is misplaced and proceeds upon a mechanical reading of observations made in a different context altogether.

It is well settled that a judgment is an authority only for the proposition of law it actually lays down, read in the context of the factual matrix in which it was rendered and the specific controversy that was before the court. Observations made in a decision cannot be read divorced from its context. The precedential value of a decision does not lie in the use of a particular expression or turn of phrase that happens to echo the submissions advanced by learned counsel, without anything more.

6.7 In **Ravindra Bal** (supra), the question before this Court was whether the provisions of Order XI Rules 12 and 14 CPC could be invoked in proceedings relating to an application for temporary





injunction, having regard to Section 141 CPC and the Explanation appended thereto. It was in this context that the Court observed that proceedings for temporary injunction are part and parcel of the suit and consequently that an application for discovery and production of documents is maintainable in proceedings upon temporary injunction application.

6.8 The decision in **Ayaz Master** (supra) proceeded on the same issue and reaffirmed the view taken in **Ravindra Bal Niketan Samiti** (supra) with regard to the applicability of Order XI Rules 12 and 14 CPC to proceedings relating to an application for temporary injunction.

6.9 Neither of aforesaid decisions was concerned with the effect of an order staying further proceedings in a suit upon a pending application for temporary injunction and, therefore, does not advance the case of petitioner in the matter at hand.

6.10 It is no doubt true that proceedings in the main suit and proceedings upon an application for temporary injunction are interrelated, inasmuch as material placed on record in the suit often furnish the foundation for forming *prima facie* opinion while considering the application for temporary injunction. Such interrelationship, however, does not render the two proceedings co-extensive or so interdependent as to make the operation of one necessarily consequential upon the other. In geometrical terms, the two proceedings may be conceived as two intersecting circles, having certain common areas of consideration; however, neither circle is overlaid one upon the other so as to render one wholly subsumed within the other.



6.11 The two proceedings maintain their distinct identities in terms of their nature, purpose and adjudicatory spheres. Proceedings in the suit are directed towards final adjudication of the rights and liabilities of the parties, after consideration of the pleadings, evidence and submissions of the parties. Proceedings under Order XXXIX Rules 1 and 2 CPC, on the other hand, are interlocutory in nature and are intended to preserve the subject matter of the litigation and protect the rights of the parties pending such final adjudication.

It is pertinent to note that findings or observations recorded while deciding an application for temporary injunction are necessarily provisional in nature and do not bind or prejudice the final adjudication of the suit on merits. It cannot, for instance, be said that merely because an application for temporary injunction is allowed in favour of a party, the suit must ultimately be decreed in its favour.

6.12 It, therefore, follows that notwithstanding the interrelationship between the two proceedings, they are distinct in their nature and sphere of operation. They are registered separately, considered singularly and decided independently. Resultantly, they may be interconnected but are not interdependent.

6.13 Consequently, the proposition that an application for temporary injunction forms part and parcel of the suit cannot be expanded into the broader proposition that an order staying further proceedings in the suit must, by necessary implication or mechanical application, result in a stay of proceedings upon the application for temporary injunction as well.

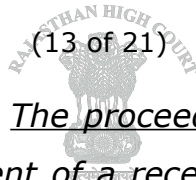




6.14 Reliance placed upon interim order dated 07.08.2023 passed in S.B. Civil Writ Petition No. 10982/2023 is also not of much relevance. Interim order, passed in a pending proceeding without final adjudication of the question involved, does not lay down any binding law and therefore, cannot be relied upon for the purposes of determination of the issue finally arising in any case.

6.15 The effect of stay on further proceedings in a suit upon interlocutory proceedings has been considered by a number of decisions of various High Courts. Division Bench of the Hon'ble Madhya Pradesh High Court, in **Madanlal Agarwal v. Kamlesh Nigam, 1975 SCC OnLine MP 12**, drew a distinction between proceedings in furtherance of the trial of the suit on merits and proceedings which are collateral, protective or necessary for keeping the *lis* alive. It was held that an order of stay of the trial or further proceedings in the suit passed by a revisional or appellate court does not, by itself, denude the Trial Court of jurisdiction to deal with proceedings of the latter nature. The relevant observations are extracted hereinbelow: -

"For instance, if an appeal or a revision is pending in the appellate or the revisional Court and if one of the parties dies in the meantime and if the appellate or the revisional Court happens to pass a stay order, that would not oust the jurisdiction of the trial Court to entertain an application for substitution of legal representatives under Order 22, Rule 3 or Rule 4 of the Code of Civil Procedure. Of Course, an application can as well be made in the appeal or the revision pending before the appellate or the revisional Court. Similarly, we do not see any reason why proceedings under Order 39, Rules 1 or 2 or Order 40, Rule 1 of the Code of Civil Procedure cannot be taken in the trial Court during the pendency of a stay order passed by the appellate



or the revisional Court. The proceeding relating to grant of injunction or appointment of a receiver may be proceeding in the suit, but this would not be a proceeding in further trial of the suit on merits. Suppose, if a party is trying to damage the property, we do not see any reason why the party aggrieved cannot approach the trial Court for appointment of a receiver or for an injunction. Similarly, if one of the parties tries to take steps which would ultimately result in defeating the decree that might be passed, we do not see any reason why the party aggrieved cannot be allowed to approach the trial Judge for an order of attachment before judgment under Order 38, Rule 5 of the Code of Civil Procedure, which, although may be a proceeding in the suit, will not be in furtherance of the trial of the suit on merits, but it would only be a protective step so as to ensure that the defendant may not be able to defeat any ultimate decree that might be passed in the suit. Looked at from this point of view, we are of the opinion that during the pendency of a stay order passed by the appellate or the revisional Court, although the trial Court or the Court below may not have any jurisdiction to proceed with the trial of the suit on merits, it can certainly take such other steps, which are collateral or which may be protective or which would be for the purpose of keeping the lis alive and all such steps, in our opinion, such as any application under Order 22, Rule 3 or Rule 4 of the Code of Civil Procedure or an application under Order 39, Rule 1 or Rule 2 or an application under Order 40, Rule 1 or an application under Order 38. Rule 5, would be maintainable in the trial Court int spite of such stay order."

(emphasis supplied)

6.16 In ***Khemraj Ratanlal Sancheti v. Vasant Madhaosa Vyavhare***, 1980 SCC OnLine Bom 156, the issue concerned the jurisdiction of the Trial Court to direct production of documents during subsistence of an order staying further proceedings. While agreeing with the view expressed by the Hon'ble Madhya Pradesh High Court in ***Madanlal*** (supra), the Hon'ble Bombay High Court





held that an order staying further proceedings does not render the Trial Court *functus officio* for all purposes and observed as under:-

"3. The order staying the proceedings in the suit was passed by the District Judge, on the application filed by the revision applicants under section 151, Civil Procedure Code, and not under Order XLI, Rule 5, Civil Procedure Code. But that would not make any difference so far as the effect of the stay order is concerned. In either case the order staying further proceeding of a pending suit does not render the court *functus officio* for all purposes. It only prevents the Court from proceeding further with the adjudication of the dispute. It does not prevent the Court from passing interlocutory orders for the purposes of keeping the proceedings alive or for preserving the subject matter of dispute or for the purpose of protecting interest of the parties to the suit."

6.17 In ***Bijay Kumar Agarwalla v. Ramakanta Das, 1987 SCC OnLine Ori 220***, the Hon'ble Orissa High Court considered the effect of an order staying further proceedings in the suit upon an interlocutory application under Order XXXVIII Rule 5 CPC seeking attachment before judgment. It was held that the effect of such stay depends upon its scope and the nature of the proceeding sought to be undertaken, and observed as under: -

"The point has been considered by different Hugh (sic) Courts and there seems to be divergence of opinion amongst them...I have carefully perused all the decisions referred to above. With respect, I would agree with the view taken by the learned Judges of the Madras, Mysore, Madhya Pradesh and Bombay High Courts holding that the lower Court retains its jurisdiction to consider and pass orders in matters which are collateral or which may be protective or which would be for the purpose of keeping the lis alive, even during subsistence of the order of the superior Court directing stay of further proceedings in the suit. But the Court should take care to ascertain that the





subject matter in the petition does not touch the trial of the suit which has been stayed by the superior Court. To hold otherwise may in many cases work out injustice inasmuch as for every collateral matter the parties will be compelled to approach the appellate or revisional Court though such a matter may not be within the ambit and scope of appeal or revision pending before the superior Court. To give an instance, when an appeal or revision is filed against an interlocutory order, the matter dealt with in that order is the subject matter in appeal or revision as the case may be. The application relating to the collateral matter may have no connection with the appeal or revision. In such cases also the party will be compelled to approach the appellate or revisional Court if it is held that in view of the stay order the trial Court is denuded of his jurisdiction to pass any order in the suit..."

(emphasis supplied)

6.18 Said principle was applied specifically to an application for temporary injunction by Hon'ble Orissa High Court in **Basanta Manjari Sawal v. Rupakanta Sahu**, C.M.P. No.127/2017. Following its earlier decision in **Bijay Kumar Agarwalla** (supra), the Hon'ble Court held that the pendency of an order staying further proceedings in the suit did not preclude the Trial Court from entertaining and deciding the application for injunction on merits.

6.19 In **Rameshwar v. Vth Additional District Judge, Basti**, AIR 1999 Allahabad 1, the Hon'ble Allahabad High Court reiterated that the effect of a stay of further proceedings has to be examined having regard to the nature and purpose of the interlocutory proceeding and its impact upon the merits of the suit. The Hon'ble Court observed as under: -

"5. Then again the object and purpose of the stay of further proceeding is also a relevant factor which also requires to





be looked into. It would depend on the nature and character of the proceeding that is pending before the superior Court as well as the nature and character of the order challenged before the superior Court and the object and purpose of grant of stay of further proceeding having relevance to the proceeding pending before the superior Court. If the interlocutory matter does not touches the decision of the merit of the suit or proceeding or encroaches upon the scope and ambit of the issues involved in the proceeding pending before the superior Court or in other words if it affects adversely the out come of the proceeding pending before the superior Court or the decision of the superior Court is expected to have an impact in the matter by reason of the decision on the interlocutory matter that is to say that if there appears to be any conflict apprehended or expected having regard to the decision in the interlocutory matter in relation to that of decision or out-come of the pending proceeding before the superior Court, in that event, such interlocutory matter cannot, be proceeded with.

6. Our experience shows that on many occasions for some reason or other further proceedings are stayed. In order to carry on the process of the suit certain steps are to be taken in aid of the proceedings or any other measures to keep the proceedings alive. The purpose of grant of stay is not the purpose to delay the process. If the interlocutory matters are decided and the suit is kept ready to proceed further as soon the stay of further proceeding cease to be operative from a stage which could have arrived to ripen the case by disposing of interlocutory matter in between without affecting the merit of the case would be in aid of the judicial process and as such not unwelcomed. On the other hand it would shorten the time and help the parties to make the suit ready.

(emphasis supplied)

6.20 In **Surendra Sawhney** (supra), Hon'ble Division Bench of this Court, in the context of Section 10 CPC, held that interlocutory proceedings such as applications for injunction, appointment of receiver and attachment do not constitute a step





in the trial of the suit. Though rendered in the context of Section 10 CPC, the decision is relevant for the conceptual distinction it draws between trial on merits and interlocutory proceedings.

Relevant observations are extracted hereinbelow: -



"20. The legal position, thus, appears to be well crystalised that in spite of the trial of the suit having been stayed under Section 10 of the Code of Civil Procedure, the consideration of the applications for the interlocutory reliefs, such as grant of injunction, appointment of receiver, attachment before judgment, impleadment of a party, amendment in the plaint etc., may be considered and order passed because such an order cannot be taken to be a step in the trial of the suit."

6.21 Coming to the other authorities relied upon by learned counsel for the respondents, reliance has also been placed upon order passed by the Hon'ble Supreme Court in **Amita Kaushik** (supra), wherein, while dealing with the submission of counsel for the respondents therein, it was held that the stay of trial of the suit did not preclude respondents from seeking interlocutory relief. Thus, said judgment is in consonance with the views expressed by the Hon'ble High Courts in the authorities discussed hereinabove.

6.22 The principle that emerges from a cumulative consideration of the authorities discussed hereinabove is that an order staying further proceedings in an original suit does not, by itself, operate as an absolute bar upon the jurisdiction of learned Trial Court to entertain and decide an interlocutory application arising in the suit. The authorities consistently draw a distinction between proceedings which are in furtherance of the trial of the suit on merits and proceedings which are collateral, incidental or protective in nature, or which are necessary for preserving the



subject matter of the litigation and protecting the rights of the parties during its pendency.

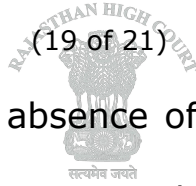
6.23 The question as to whether an order staying further proceedings in the main suit would also operate to stay proceedings upon an interlocutory application must be determined having regard to the following considerations: (a) the scope and terms of the order of stay, (b) the object and purpose for which it was granted, (c) the nature and character of the proceedings pending before the superior Court, and (d) the nature and effect of the interlocutory proceeding sought to be undertaken by learned Trial Court.

6.24 Where such interlocutory proceeding does not amount to a continuation of the trial on merits, does not encroach upon the subject matter of the proceedings pending before the superior Court, and does not conflict with the order of stay or the issues requiring consideration therein, its consideration cannot be said to be precluded merely by reason of the stay.

6.25 Applying aforesaid principle to the question arising in present case, an application under Order XXXIX Rules 1 and 2 CPC is incidental / collateral to the main proceedings. The jurisdiction exercised by learned Trial Court while considering such application is interlocutory; its object is to preserve the subject matter of the suit and protect the rights of the parties pending final adjudication, and its determination does not constitute adjudication of the ultimate rights and liabilities of the parties in the suit. The consideration of such application, therefore, does not amount to continuation of the trial of the suit on merits.

Accordingly, a general order staying further proceedings in the





original suit cannot, in the absence of language or circumstances indicating otherwise, be construed as automatically staying proceedings upon a pending application under Order XXXIX Rules 1 and 2 CPC. Whether learned Trial Court can proceed with such application must depend upon the terms and scope of particular order of stay and whether consideration of the application would in any manner encroach upon the proceedings or issues which stand stayed before the superior Court.

7. Coming to the facts of present case, order dated 28.08.2026 passed by this Court in S.B. Civil Writ Petition No.20483/2026 merely directed that further proceedings in Civil Original Suit No.18/2023 pending before learned District Judge, Jodhpur, shall remain stayed. No express directions were passed therein staying the proceedings upon the pending application under Order XXXIX Rules 1 and 2 CPC.

8. It is also pertinent to note that the suit has been instituted seeking partition and mandatory injunction, and the application under Order XXXIX Rules 1 and 2 CPC is directed towards preservation of the subject matter and protection of the rights of the parties pending final adjudication. Consideration of such application is interlocutory and does not amount to continuation of the trial of the suit on merits. Nor would determination of said application adjudicate upon or otherwise encroach upon the controversy pending consideration before the Coordinate Bench in S.B. Civil Writ Petition No.20483/2026.

9. In these circumstances, the objection raised by petitioner that learned Trial Court was precluded from considering the application under Order XXXIX Rules 1 and 2 CPC merely by





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reason of stay order dated 28.08.2026 cannot be accepted. Consequently, no illegality can be said to have been committed by learned Trial Court in rejecting the application filed by petitioner under section 151 for stay of proceedings in relation to the temporary injunction application.

10. So far as the contention of learned counsel for the petitioner regarding merger of earlier order dated 12.08.2026 into the subsequent interim order dated 28.08.2026 is concerned, the same is wholly misconceived. Both aforesaid orders were passed in different writ petitions and dealt with distinct issues; the order for expeditious disposal was passed specifically regarding the pending application for temporary injunction, whereas the latter concerned the proceedings arising out of application preferred against the order passed in the main suit under the provisions of the Evidence Act.

11. Although an application seeking recall of order dated 12.08.2026 has been filed, the same has not been decided till date. Consequently, the directions contained in said order continue to hold the field and cannot be said to have been nullified merely because further proceedings in the original suit have subsequently been stayed in another writ petition.

12. The scope of interference by this Court in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India is limited. The jurisdiction so exercised is supervisory and not appellate in nature. Interference is warranted only where the subordinate Court has acted without jurisdiction or in excess of the jurisdiction vested in it, or where the order impugned suffers from patent illegality, perversity or manifest error of law resulting





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in failure of justice. This Court, while exercising such jurisdiction, does not ordinarily re-appreciate the material on record or substitute its own view merely because another view may be possible.

13. This Court finds no error, much less an error apparent on the face of the record, or manifest injustice in impugned order warranting interference in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India.

14. Consequently, present writ petition, being devoid of merit, is hereby **dismissed**.

15. Stay application and all other pending applications, if any, also stand dismissed.

(SANJEET PUROHIT),J

227/Sumer Singh