

observed, the liability to maintain the wife and children arises because of matrimonial tie and subsistence of the marriage between the parties. If it is held that no maintenance can be granted during the pendency of the application, it will deprive the right to life of the applicant as envisaged by Article 21 of the Constitution of India. I am, therefore, unable to agree with the contention of the learned Counsel for the petitioner that no order granting maintenance can be passed during the pendency of the application for permission to file the suit as an indigent person.

(7) In this view of the matter, I do not find any ground warranting interference with the order of the trial court granting interim maintenance to the plaintiff-applicants.

(8) The revision petition, therefore, fails and is accordingly, dismissed.

**R.N.R.**

*Before V.M. Jain, J*

M/S CENTURY PROTEINS LTD.,—*Petitioner*

*versus*

M/S SHAM SUNDER (HARYANA) INDUSTRIES PVT. LTD.,—  
*Respondent*

C.R. No. 1514 of 1998

24th February, 2000

*Code of Civil Procedure, 1908—0.39 Rls. 1 & 2 and S. 10—Tri of the suit stayed u/s 10 CPC—Plaintiff filling application u/o 39 Rls. 1 & 2 CPC—Whether such an application can be entertained by the Court—Held, yes—Stay of the trial of the suit u/s 10 CPC cannot bar the Court from making interlocutory orders.*

Held that the learned District Judge was perfectly justified in holding that he was competent to deal with the application under Order 39 Rules 1 & 2 CPC, inspite of the fact that the trial of the suit had been stayed under Section 10 CPC. Thus, finding no merit in the revision petition, the same is hereby dismissed.

(Para 8)

R.L. Sharma, Advocate, *for the Petitioner.*

R.K. Jain, Advocate, *for the Respondent.*

---

**JUDGMENT**

*V.M. Jain, J*

(1) This is a revision petition against the order dated 11th March, 1998 passed by the District Judge, holding that the Court was competent to hear and decide the application under Order 39 Rule 1 and 2, CPC, in spite of the fact that the trial of the suit had been stayed by the Court,—*vide* order dated 14th June, 1997.

(2) The facts which are necessary for the disposal of the present revision petition are that M/s Sham Sunder (Haryana) Industries Pvt. Ltd. (plaintiffs) had filed a suit for permanent injunction against M/s Century Proteins Ltd. (defendent) seeking to restrain and forbid the defendant from infringement of trade name, copy rights and passing of the trade mark of "Gopal Vanaspati" of the plaintiff company and further to restrain the defendant from manufacturing, selling, offering for sale or otherwise dealing and passing of the products of Vanaspati oil under the trade mark of exclusive right to use the trade mark "Gopal Vanaspati". The said suit was contested by the defendant by filling a written statement. Subsequently, on an application of the defendant under Section 10, CPC, for stay of the suit on account of another litigation pending between the parties, the learned District Judge *vide* order dated 14th June, 1997 stayed the present suit in view of the previously instituted suit No. 502 of 1997 pending in the High Court at Delhi. Lateron, the learned District Judge proceeded to decide the application under Order 39 Rule 1 and 2 filed by the plaintiffs for the grant of ad-interim injunction. The said move was contested by the defendant by submitting that once the trial of the suit had been stayed, the application under Order 39 Rule 1 and 2 could not be decided. The learned District Judge, after hearing both sides and perusing the record, dismissed this objection of the defendant *vide* order dated 11th March, 1998 and it was held that in spite of the fact that the trial of the suit had been stayed, yet he was competent to hear the said application. Aggrieved against the said order of the learned District Judge, the defendant-petitioner has filed the present revision petition.

(3) Notice of motion was issued. Learned counsel for the parties have been heard.

(4) Learned counsel for the petitioner submitted before me that the learned District Judge erred in law in holding that the application under Order 39 Rule 1 and 2 CPC, could be heard and decided by him in spite of the fact that the trial of the suit had been stayed under Section 10, CPC. When asked if there was any case law on the subject, the learned counsel submitted that in spite of his best efforts he could

not lay his hands on any authority in support of the proposition. On the other hand, learned counsel for the plaintiff-respondents submitted before me that there were numerous rulings of various High Courts to the effect that even if the trial of the suit had been stayed yet an application under Order 39 Rule 1 and 2 could be decided by the court. Reliance had been placed on *V.P. Vrinda vs. K. Indira Devi and others* (1), *V.R. Balakrishanan Nadar vs. R. Velayudhan Nadar and others*(2), *Baburao Vithalrao Sulunke vs. Kadarappa Prasappa Dabbannavar and another*(3), *Smt. Kulsumum Nisan vs. Mohammad Farooq and others*(4) and *Senaji Kapurchand and others vs. Pannaji Devichand*(5).

(5) After hearing both sides and after perusing the record, I find no merit in the present revision petition.

(6) The learned District Judge, while passing the impugned order dated 11th March, 1998 had placed reliance on the law laid down by *Kerala High Court* in 1995(1) L.J.R. 177, which is equivalent to AIR 1995 Kerala 57 (supra). In the said authority it was held by the Kerala High Court as under :—

“From the above discussion, the revision petitioner is entitled to have only the trial of the suit stayed under section 10, CPC. Clearly, therefore, even if the trial of the suit is stayed, the Court will be entitled to pass interlocutory orders in the nature of injunction, appointment of receiver or an order of attachment before judgment. In so far as petition under Order 39, Rule 1, CPC, is concerned the court would be concerned only with prima-facie case, irreparable loss and injury, and the balance of convenience. A finding one way or other in that aspect need not affect the consideration of the issue in the suit. An enquiry as regard the said aspect cannot be treated as trial within the meaning of Section 10, C.P.C. Therefore, a stay of trial of the suit under section 10 C.P.C. cannot bar the court from entertaining such an interlocutory application”.

(7) The Kerala High Court had placed reliance on *V.R. Balakrishanan Nadar's case* (supra) in which it was held that an interlocutory order in the nature of issue of injunction, or appointment

- (1) A.I.R. 1995 Kerala 57
- (2) A.I.R. 1980 Kerala 161
- (3) A.I.R. 1974 Mysore 63
- (4) A.I.R. 1969 Allahabad 479
- (5) A.I.R. 1922 Bombay 276

---

of a receiver, or an order of attachment before judgment cannot be regarded as a matter affecting the trial of the suit and thus, cannot be stayed under Section 10, C.P.C. In the said authority, reliance had been placed on the law laid down by the Mysore High Court in *Baburao Vithalrao Sulunke's* case (supra). In the said authority it was held by the Mysore High Court that Section 10, C.P.C. seems to refer to the stay of trial of a suit and not other proceedings of an interlocutory character. In the said case the trial Court had declined to decide the application Under Order 38 Rule 5, CPC, for the grant of attachment before judgment on the ground that the suit had been stayed pursuant to the provisions of Section 10, CPC. The Mysore High Court allowed the revision petition, set aside the order of the trial court and directed the trial court to decide the matter in accordance with law. In *Senaji Kapurchand's* case (supra) it was held by a Division Bench of the Bombay High Court that an order staying the suit under Section 10, C.P.C, does not prevent the court from making interlocutory orders such as orders for a Receiver or an injunction or an order for attachment before judgment.

(8) In view of the law laid down by various High Courts in the above mentioned authorities, in my opinion, the learned District Judge was perfectly justified in holding that he was competent to deal with the application under Order 39 Rule 1 and 2, CPC, in spite of the fact that the trial of the suit had been stayed under Section 10, C.P.C. No authority to the contrary had been cited before me by the learned counsel for the petitioner.

(9) For the reasons recorded above, finding no merit in the present revision petition, the same is hereby dismissed with no order as to costs.

---

**R.N.R**

*Before V.M. Jain, J*

KASHMIR SINGH,—*Petitioner*

*versus*

TANA & OTHERS,—*Respondents*

C.R. No. 2002 of 1998

11th July, 2000

*Code of Civil Procedure, 1908—0.21 Rls. 35(1) & (2)—Trial Court passing a decree for joint possession of immoveable property—Executing Court ordering issuance of warrants of actual possession on the basis of the list of khasra numbers supplied by the decree holder—Executing*