

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

314-2

**CR-795-2020 (O&M)
Date of decision: 23.11.2022**

Shivendra Pal

.....Petitioner

Versus

Yudhister Pal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Gurminder Singh, Sr. Advocate with
Mr. Nikhil Sabharwal, Advocate
for the petitioner.

Mr. Ankit Kaushal, Advocate
for respondents No.1 and 5 to 7.

Mr. Vikas P. Singh, Advocate
for respondents No.2, 15 and 16.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is impugning the order dated 03.12.2019 (Annexure P-19) passed by learned Civil Judge (Jr.Divn.), Panchkula whereby his application dated 11.03.2019 (Annexure P-18) filed under Section 151 of the Code of Civil Procedure, 1908 (for short, 'the Code') filed under Section 151 of the Code for deciding his application under Order 39 Rules 1 and 2 of the Code (Annexure P-17) was dismissed on the ground of it having been rendered infructuous.

Learned senior counsel appearing for the petitioner vehemently contends that the impugned order suffers from patent illegality and is contrary to the settled position of law pertaining to stay of suit under Section 10 of the Code.

Learned senior counsel for the petitioner has argued that the Trial Court while dismissing the application under Order 39 Rules 1

and 2 of the Code erred in observing that it had been rendered infructuous by failing to appreciate that there was no bar on the powers of the Trial Court to entertain and decide interlocutory applications filed by the parties even if the trial had been stayed under Section 10 of the Code.

Learned senior counsel further submits that Section 10 of the Code provides for stay of the trial, however, expression 'trial' appearing therein would not include interlocutory matters within its ambit, for the purpose of Section 10 of the Code. Learned senior counsel has, therefore, asserted that the Trial Court had fallen into error in not deciding the application under Order 39 Rules 1 and 2 on merits and hence the impugned order dated 03.12.2019 (Annexure P-19) deserved to be set aside. In support, learned senior counsel has placed reliance upon ***Indian Bank Vs. Maharashtra State Co-operative Marketing Federation Ltd. : 1998(3) RCR (Civil) 228.***

Per contra, learned counsel appearing for the respondents while controverting the submissions made by learned senior counsel for the petitioner, contend that once the trial had been stayed under Section 10 of the Code, the Trial Court had no power either to proceed with the suit any further or even to entertain and decide the interlocutory applications. The learned counsel still further submit that the expression 'trial' cannot be narrowly interpreted so as to exclude interlocutory matters from its scope for the purpose of Section 10 of the Code. Ld. counsel have urged that a stay of suit would imply stay of all proceedings and not otherwise. Learned counsel have also submitted that even otherwise the Trial Court at Panchkula has no territorial

jurisdiction to try the instant suit and hence in the circumstances, the Court concerned has no power to pass any orders on the application filed under Order 39 Rules 1 and 2 of the Code.

I have heard learned counsel for the parties and perused the relevant material on record.

It would be apposite to reproduce Section 10 of the Code to deal with issue in hand, which 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 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 Court.

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

The question which arises for consideration of this Court is as to whether or not a Court has the power to entertain and adjudicate upon interlocutory matters when the trial of a suit has been stayed by it under Section 10 of the Code. The Hon'ble Supreme Court in Indian Bank's case (supra) while interpreting the expression “trial” appearing in Section 10 of the Code has held as under:-

“6. Section 10 of the Code prohibits the court from proceeding with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit provided other conditions mentioned in the section are also satisfied. The word 'trial' is no doubt of a very wide import as pointed out by the High Court. In legal parlance it means a judicial examination and determination of the issue in civil or criminal court by a competent Tribunal. According to Webster Comprehensive Dictionary, International Edition, it means the examination, before a tribunal having

assigned jurisdiction, of the facts or law involved in an issue in order to determine that issue. According to Stroud's Judicial Dictionary (5th Edition), a 'trial' is the conclusion, by a competent tribunal, of question in issue in legal proceedings, whether civil or criminal. Thus in its widest sense it would include all the proceedings right from the stage of institution of a plaint in a civil case to the stage of final determination by a judgment and decree of the Court. Whether the widest meaning should be given to the word 'trial' or that it should be construed narrowly must necessarily depend upon the nature and object of the provision and the context in which it used.

*7. Therefore, the word "trial" in section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to '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'. 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 matters in issue. The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the court to entertain and deal with the later suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. **It has been construed by the courts as not a bar to the passing of interlocutory orders such as an order for consolidation of the later suit with earlier suit, or appointment of a Receiver or an injunction or attachment before judgment. The course of action which the court has to follow according to section 10 is not to proceed with the 'trial' of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word 'trial' in Section 10 is not used in its widest sense.***

In the light of the above settled position of law, this Court has no hesitation in holding that the Trial Court erred in disposing of the application filed under Order 39 Rules 1 and 2 of the Code by the petitioner, as having been rendered infructuous.

Mere stay of trial under Section 10 of the Code would not preclude the Trial Court, rather, it would be well within the powers of

the Court to entertain and decide applications for grant of interlocutory reliefs. Any decision of interlocutory matters cannot be considered to be a step forward in the trial of a suit.

The submissions of the learned counsel for the respondents qua the jurisdiction of the Trial Court is of no significance at this stage and needless to add the respondents shall always be at liberty to raise these pleas before the Trial Court at the appropriate stage.

As a sequel to the above discussion, the instant revision petition is allowed and the impugned order dated 03.12.2019 (Annexure P-19) is set aside. The matter is remanded back to the Court concerned with the directions to restore the application under Order 39 Rules 1 and 2 of the Code and decide the same on merits, in accordance with the provisions of law. Since the suit was instituted in the year 2016, the Trial Court shall make earnest efforts to decide the aforesaid application under Order 39 Rules 1 and 2 of the Code expeditiously, preferably within six weeks from the date of this order.

However, it is made clear that nothing contained hereinabove shall be deemed to be an expression on the merits of the case in hand.

23.11.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No