

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.17908 OF 2024

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Ashok Bhagelu Prajapati & Anr.

... Petitioners

V/s.

Rajbali Bhagoti Kohar & Ors.

... Respondents

Mr. R. P. Ojha i/b Asit Singh for petitioners.

Shahnaz Baig a/w Ms. Pratibha Shelake for respondent
Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 23, 2025

P.C.:

1. The petitioner is aggrieved by the order dated 11th July 2024, passed by the Trial Court, wherein it has been observed that either party cannot be prevented from approaching the Court to submit any application in cases of urgency. By the said order, the Court has further granted liberty to the plaintiff to register a notice of motion.

2. The order passed by this Court on 18th February 2015 in Notice of Motion (L) No. 2954 of 2014 stayed the suit until the appeal proceedings initiated by the plaintiffs before the Allahabad High Court are disposed of. It is well settled that a stay order does not amount to termination of proceedings but merely halts their progression temporarily.

3. The proceedings before the Allahabad High Court are still pending; however, the stay granted by this Court on the subsequent suit does not preclude either party from seeking interim relief to preserve the subject matter of the suit. Courts are empowered under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, to grant interim reliefs to ensure that the rights of parties are safeguarded, and the subject matter is not rendered infructuous during the pendency of substantive proceedings.

4. The law on this issue has been laid down by this Court in the case of *Khemraj Ratanlal Sancheti and Others vs. Vasant Madhaosa Vyavhare and Another*, reported in *1981 Mah LJ 200*. It has been observed that during the pendency of a stay order issued by the appellate or revisional Court, the Trial Court can undertake ancillary actions that are collateral, protective, or necessary for preserving the suit's subject matter. The Trial Court is not rendered *functus officio* for all purposes by a stay order. It may pass interlocutory orders necessary for preserving the interest of the parties or the subject matter of the suit.

5. In light of the aforementioned precedent, it is clarified that the substantive hearing of the suit shall remain stayed as per the earlier orders passed by this Court. However, the scope of interlocutory applications remains unaffected, subject to compliance with procedural and substantive legal provisions.

6. It is further clarified that parties are entitled to seek interim relief as and when required to preserve the subject matter of the suit.

7. With the above observations and clarifications, the writ petition stands disposed of in the aforesaid terms. There shall be no order as to costs.

(AMIT BORKAR, J.)