2026:AHC:200938

Reserved On:21.09.2026
Delivered On:24.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 12885 of 2026

M/s Harisons (India) Products Pvt. Ltd.

…..Petitioner(s)

Versus

M/s Harilal and Sons and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Anjali Goklani, Archit Mehrotra, Tanishk Goyal
Counsel for Respondent(s)	:	

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Tanishk Goyal, learned counsel for the petitioner.

2. The present petition has been filed assailing the order dated 18.08.2026 passed by the Presiding Officer, Commercial Court, Kanpur Nagar, in Original Suit No. 17 of 2024, whereby the learned Commercial Court rejected the plaintiff-petitioner's application (Paper No. 41Ga) seeking expeditious disposal of its application under Order XXXIX Rules 1 & 2 C.P.C., and instead allowed the defendant-respondents' application (Paper No. 43Ga) opposing the same.

3. No notice be issued to the private respondents taking into consideration the nature of the order proposed to be passed.

4. The counsel for the petitioner submits that the plaintiff-petitioner instituted Original Suit No. 17 of 2024 on 03.08.2024 seeking a decree of permanent injunction restraining the defendant-respondents from infringing and passing off the petitioner's trademark, along with rendition of accounts. Along with the plaint, the petitioner moved an application under Order XXXIX Rules 1 & 2 C.P.C. (Paper No. 6Ga) dated 06.08.2024 for interim injunction, to which the defendant-respondents filed objections (Paper No. 20Ga). He further submits that the defendant-respondents also filed an application under Order VII Rule 11 read with Section 151 C.P.C. (Paper No. 15Ga) seeking rejection of the plaint, which they later sought to amend vide application under Order VI Rule 17 C.P.C. (Paper No. 30Ga) dated 30.10.2025, introducing an additional ground of undervaluation. This amendment was allowed by the learned Commercial Court vide order dated 30.01.2026, over the objections of the petitioner (Paper No. 36Ga). Aggrieved thereby, the petitioner approached this Court in Misc. Petition No. 4353 of 2026 (Civil) under Article 227, in which an interim order dated 06.04.2026 was passed staying the effect and operation of the order dated 30.01.2026 staying only the order permitting amendment of the Order VII Rule 11 application, and not the entire suit proceedings. However, on the next date that is on 08.04.2026, the Commercial Court erroneously construed the order dated 06.04.2026 as staying the entire proceedings of Original Suit No. 17 of 2024, and on that basis adjourned the suit on 22.04.2026 and 08.05.2026. He further submits that pursuant thereto, the petitioner moved application Paper No. 41Ga dated 23.05.2026 seeking expeditious decision on its pending injunction application (Paper No. 6Ga). The defendant-respondents filed objections thereto (Paper No. 43Ga) dated 25.06.2026. After hearing both sides on 29.07.2026, the

learned Commercial Court, by the impugned order dated 18.08.2026, rejected the petitioner's application 41Ga and allowed the respondents' objection 43Ga, essentially holding that the injunction application could not be decided while the Order VII Rule 11 application remained pending.

5. Learned counsel for the petitioner submits that the impugned order proceeds on a misreading of this Court's order dated 06.04.2026, which stayed only the operation of the order dated 30.01.2026 permitting amendment of the Order VII Rule 11 application, and not the suit proceedings as a whole. He further submits that the pendency of an application under Order VII Rule 11 C.P.C. is, by itself, no ground to defer adjudication of an application for temporary injunction under Order XXXIX Rules 1 & 2 C.P.C., particularly having regard to the object of the Commercial Courts Act, 2015, which mandates expeditious disposal of commercial disputes. He lastly submits that the petitioner's injunction application has remained pending for over two years without adjudication on merits, causing continuing and irreparable prejudice. Hence, the present petition.

6. In support of his submissions, he has placed reliance on the judgment of this court in ***Anand Kumar Mishra Vs. Vikram Pandey @ Vikram Mishra & 9 others*** [Matter Under Article 227 No. 2532/2013, decided on 22.10.2013]***, Manish Barnwal Vs. Smt. Preeti Pandey & Others*** [Matter Under Article 227 No. 995/2024, decided on 06.02.2024] and ***Dr. Dinesh Kumar Srivastava v. District Judge, Allahabad & 5 Others*** [Matter Under Article 227 No. 1656/2013, decided on 12.09.2013].

7. The submission advanced by the counsel for the petitioner has been considered and material available on record has been carefully perused.

8. The order dated 06.04.2026 was categorical in staying only the effect and operation of the order dated 30.01.2026 (which permitted amendment of the Order VII Rule 11 application). It did not, either expressly or by necessary implication, stay the entire proceedings of Original Suit No. 17 of 2024. The Commercial Court's construction on the interim order of this Court dated 06.04.2026 staying the suit in its entirety and its consequent deferral of the petitioner's application for expeditious hearing of the injunction application, proceeds on a misreading of the order of this Court and cannot be sustained.

9. It is well settled, as held by this Court in ***Anand Kumar Mishra*** (supra), that the mere pendency of an application under Order VII Rule 11 C.P.C. does not oust the jurisdiction of the trial court to consider and decide an application under Order XXXIX Rules 1 & 2 C.P.C., and that such an application is required to be decided on its own merits on considerations of prima facie case, balance of convenience and irreparable injury.

10. Further, this court in ***Dr. Dinesh Kumar Srivastava*** (supra) has held that if a temporary injunction is not granted, it may frustrate the very subject matter of the suit and the purpose of obataining temporary injuction may defeated by defendants raising plea of valuation and thereafter, obstructing the entire proceeding.

11. Permitting deferral of an injunction application merely on account of pendency of Order 7 Rule 11 application would render the remedy of temporary injunction illusory during the pendency of preliminary objections, and would run counter to the object of speedy adjudication underlying the Commercial Courts Act.

12. Further, no useful purpose will be served by keeping the present matter pending or by remitting the petitioner to await the outcome of the Order VII Rule 11 application before its application for interim protection is even considered. Keeping the matter pending

in that manner would be entirely futile for the petitioner, inasmuch as the defendant-respondents would, in the meantime, continue infringing and passing off the petitioner's trademark, causing continuing and irreparable injury that no subsequent adjudication could fully redress. The very purpose of seeking interim protection under Order XXXIX Rules 1 & 2 C.P.C. would stand defeated if its consideration is made contingent upon the final disposal of the Order VII Rule 11 application.

13. In view of the above, the impugned order dated 18.08.2026 passed by the Presiding Officer, Commercial Court, Kanpur Nagar in Original Suit No. 17 of 2024 holding that no adjudication could be made on the petitioner's application under Order XXXIX Rules 1 & 2 C.P.C. during the pendency of the Order VII Rule 11 application is unsustainable and is **set aside**.

14. The petition stands disposed of.

15. The matter is remanded to the Commercial Court, Kanpur Nagar, with a direction to decide the petitioner's application under Order XXXIX Rules 1 & 2 C.P.C. (Paper No. 6Ga) on its own merits expeditiously, preferably within a period of **one month** from the date of production of a certified copy of this order.

16. It is clarified that this Court has not expressed any opinion on the merits of the rival contentions on the injunction application or the Order VII Rule 11 application and the Commercial Court shall decide the same uninfluenced by any observation made herein-above, strictly in accordance with law.

(Piyush Agrawal,J.)

September 24, 2026
Amit Mishra

Digitally signed by :-
AMIT KUMAR MISHRA
High Court of Judicature at Allahabad