RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 22200/2026
CNR: RJHC021005982026 | URN: CW / 46806U / 2026

Rajasthan High Court
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Sita Devi W/o Shri G.L. Choudhary, Aged About 53 Years, R/o 76, Parshvnath Colony, Nirman Nagar, Jaipur, Rajasthan-302019 Through Its General Power of Attorney Holder Rajendra Choudhary S/o Shri Gogaram, Aged About 40 Years, R/o 43, Saraswati Nagar, Kayad Road, Ajmer.

----Petitioner

Versus

1. ACV Explosives LLP, Having Its Address At 264, 2nd Floor, Sunny Mart, Plot No. A-05, New Aatish Market, Gopalpura Bypass, Gurjar Ki Thadi, Jaipur, Rajasthan - 302020 Presently located at C-98, Chomu House Kothi, Jagatpath, C-Scheme, Jaipur, Rajasthan - 302001.
2. Hirendra Singh Choudhary S/o Ramnarayan Choudhary, R/o 5-D-1, Lal Kothi, Gandhi Nagar, Jaipur, Rajasthan-302015.
3. Charan Singh Choudhary S/o Ramnarayan Choudhary, R/o Flat No. 401, 4Th Floor, Hare Krishna Apartment, P.no.38, Keshav Nagar Lane-3, Civil Lines, Jaipur, Rajasthan-302006.

----Respondents

For Petitioner	:	Mr. S.S. Hora Advocate with Mr. Himanshu Agarwal Advocate.
For Respondents	:	Mr. Aditya Jain Advoate.

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

REPORTABLE

04/11/2026

1. The petitioner has filed this writ petition assailing the order dated 10.09.2026 passed by the Commercial Court No. 1, Jaipur Metropolitan-II, Jaipur (hereinafter to be referred as 'the Commercial Court'), whereby, the application preferred by the

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respondents under Order XIX Rule 2 read with Section 151 CPC has been allowed and the petitioner's General Power of Attorney holder has been directed to appear for cross-examination in relation to the affidavit filed in support of the application under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996').

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2. The petitioner instituted proceedings under Section 9 of the Act of 1996 seeking interim measures of protection in relation to the affairs and assets of the respondent-LLP. The application was presented through her General Power of Attorney holder, who also filed an affidavit in support thereof. The respondents opposed the application and sought cross-examination of the attorney holder, primarily questioning his personal knowledge of the facts stated in the affidavit and the circumstances in which the petitioner had authorised him to represent her.

3. Learned counsel for the petitioner contended that the proceedings under Section 9 of the Act of 1996 are summary in nature and are intended to secure appropriate interim protection pending arbitration. The Commercial Court, while considering the application, is required to examine the pleadings, documents and material placed on record and determine whether the circumstances warrant grant of interim measures. Such proceedings cannot be permitted to assume the character of a regular civil trial. It was submitted that the respondents had failed to demonstrate any exceptional necessity for subjecting the attorney holder to cross-examination. Reliance has been placed upon judgment in the cases of **Shruti Manav Sharma &**

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Another. Vs Sunaina Singh & Ors. 2026 SCC OnLine SC 1549, Lookman Vs Indra Singh, 2002 SCC OnLine Raj 696 and **Shetty Chandra Shekar & Others Vs Neeti Raumlu & Others, 2008 SCC OnLine AP 47** in support of his contentions.

4. Per contra, learned counsel for the respondents submitted that the affidavit contains statements concerning events which occurred much prior to execution of the General Power of Attorney and that the attorney holder has not established his personal knowledge of those events. It was further contended that Rule 4(1) of the Rajasthan Arbitration Rules, 2003 prescribes the conditions subject to which an authorised person may sign, verify and swear an affidavit on behalf of an applicant. In these circumstances, the direction for cross-examination was justified. Learned counsel relied upon **Ram Swaroop vs. Bholu Ram, AIR 1991 Raj 56.**

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

6. There can be no dispute that, by virtue of Rule 11 of the Rajasthan Arbitration Rules, 2003, the provisions of Order XIX CPC are applicable to proceedings under the Act of 1996. Order XIX Rule 2 CPC also empowers the Court, in an appropriate case, to direct the attendance of a deponent for cross-examination. However, the existence of such power does not make cross-examination an automatic consequence of a request made by either party. The discretion has to be exercised judicially, keeping in view the nature of the proceedings and the necessity of such examination for deciding the controversy.

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7. The proceedings under Section 9 of the Act of 1996 are essentially intended to provide interim protection to preserve the subject matter of arbitration and prevent the arbitral proceedings from being rendered infructuous. The Court, while exercising jurisdiction under Section 9, is not required to conduct a full-fledged adjudication of the rights and liabilities of the parties. Its consideration is confined to determining whether an appropriate interim measure is warranted on the basis of the material placed before it, without expressing any final opinion on the disputes which are to be adjudicated in arbitration.

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8. The summary and protective character of Section 9 proceedings cannot be lost sight of. If every objection regarding the source of knowledge of the person verifying an application, or every dispute concerning the correctness of the assertions made therein, is permitted to result in cross-examination, the proceedings may become protracted and lose their very purpose. Such a course would effectively convert an application for interim protection into a mini-trial, which is neither contemplated by Section 9 nor consistent with its object.

9. The decision of this Court in **Ram Swaroop v. Bholu Ram (supra)**, recognises the power of the Court to direct cross-examination under Order XIX Rule 2 CPC. However, the said power is discretionary. In **Chotu Khan v. Abdul Karim, AIR 1991 Raj 119**, this Court emphasised that cross-examination in interim proceedings ought not to be directed routinely, as it may cause considerable delay and defeat the very object of interim relief. The

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necessity and bona fides of such a request must be examined in the context of the proceedings.

10. In the case of **Shetty Chandra Shekar & Others (supra),** Andhra Pradesh High Court has held as under:

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> *"**8.** It is not uncommon that in proceedings under Order XXXIX, Rule 1 C.P.C. parties file affidavits in support of their respective cases. In case, the Court comes to the conclusion that it is necessary to summon the deponents of the affidavits, in view of the conflicting assertions or to find out the identity of parties, who filed affidavits of same person in support of their respective cases with opposite affirmations, then it can order so. In such circumstances, it, cannot be said that the Court had committed an error or illegality in summoning the deponent for cross-examination. The purport of Order XIX Rule 2 C.P.C. appears to be that the Court need not either accept or reject the affidavits filed summarily, and it can consider the said affidavits, and if for valid and good reasons, it can always exercise its discretion to summon the deponent of the affidavit, to come to a just conclusion in the interest of justice, and in that regard, power is conferred on the Court to summon the person who had sworn to the affidavit and not the person who filed in support of the petition.*
>
> ***9.** A bare perusal of the provisions of Order XIX, Rule 2, would make it clear that the question of ordering attendance for cross-examination of the deponent arises only in cases where the third party affidavits are filed in support of the cases of the respective parties. The language employed in the provision would not indicate conferring of any power on the Court to call a person swearing the affidavit filed in support of the petition, for cross-examination. The affidavit filed in support of the petition shall not be treated, as an affidavit filed by way of evidence, and in this context, it would be relevant, if a reference is made to the provisions of Section 3 of the Indian Evidence Act, 1872, which defines "evidence" to mean and include all statements which the Court permits or requires to be made before it by in witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence. In the present case, the respondents-defendants filed the petition under Order XIX, Rule 2 C.P.C. to direct the petitioner-plaintiff No. 1 to come to the Court for the purpose of cross-examination. The question of applicability of the provisions of Order XIX, Rule 2 C.RC. would arise only in cases where an affidavit was filed in support of the cases of the respective parties i.e. either on behalf of the plaintiff or on behalf of the defendant, by way of evidence, but certainly not an affidavit filed in support of a petition. Since the affidavit filed in support of a petition cannot be treated as evidence, the present petition filed by the respondents-defendants under Order XIX, Rule 2 C.P.C. seeking to summon the deponent of the affidavit filed in support of the petition for temporary injunction, was not maintainable, and more so when it is not the case of the respondents-defendants that they intended to summon petitioner-plaintiff No. 1 because he had sworn to the affidavit by way of evidence to support the case of the plaintiffs. The law is well settled law that when affidavits are*

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filed in a proceeding under Order XXXIX, Rule 1 C.P.C. or any other proceedings, and in case the Court entertains a doubt, with regard to the identity of the person or persons who gave the affidavit, then it has the power and discretion to order the attendance of the deponent of the affidavit, for cross-examination so as to come to a just conclusion, to determine such petition. In such situations, the order passed by the Court below to summon the deponent for cross-examination cannot be faulted and such orders, can neither be said to be illegal nor beyond the competence of the Court.

10. *In the above view of the matter, it has to be held that the present application filed by the respondents-defendants under Order XIX Rule 2 C.P.C. is not maintainable, and the Court below was not justified in order the present application holding that the respondents-defendants counsel is entitled to cross-examine petitioner-plaintiff No. 1 who swore to the affidavit filed in support of the petition for grant of temporary injunction, and more so when the present application, does not fall within the ambit and scope of Order XIX Rule 2 C.P.C. For the foregoing reasons, the order passed by the Court below, impugned in the C.R.P. cannot be sustained, and the same is accordingly set aside and the C.R.P. is allowed."*

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11. It would also be relevant to quote following paras of judgment of this Court in the case of **Lookman (supra)**, which read as under:

*"**5.** It is settled legal proposition that affidavit is not an evidence within the meaning of Section 3 of the Evidence Act as held by the Courts in Prakash Rai v. J.N. Dhar (1), Radha Kishan v. Navratan Mal Jain (2), S. Sukumar v. Spl. Commissioner of Commercial Taxes, Madras (3) and Glorious Plastics Ltd. v. Laghate Enterprises (4).*

17. *In Sultan Khan (supra), this Court observed as under:—*

> *"On the other hand, if the provision contained in O. 19 R. 2 CPC is taken to mean compulsion and as a rule cross-examination is allowed in interlocutory proceedings, there would be invariably considerable delay in the disposal of the same and it is very likely that in number of cases the delay involved may defeat the object of the application… These considerations lean in favour of giving the word 'may' its ordinary meaning in this rule, i.e. implying a discretion… It is in the discretion of the Court to order the attendance of the deponents for their cross-examination on the affidavits filed by them."*

26. *In view of the above, the law on the issue can be summarised that Code does not define "application" nor makes any distinction between one application and another. Provisions of O. XIX Rr. 1 and 2 of the Code are applicable while deciding any application under the Code. The party seeking permission of the Court to cross-examine the declarant must disclose the reasons why it necessary to cross-examine the deponents and it should not merely be a*

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pretext for delaying the proceedings. Tendency to procrastinate proceedings by any means has to be depricated, but at the same time, sufficiency of the grounds/reasons for seeking permission to cross-examine the deponents require to be examined. The Court is under an obligation to pass an appropriate order giving cogent reasons while allowing or rejecting the application for calling the deponent for cross-examination. Undoubtedly, such a course is not to be adopted in a routine manner. No straightjacket formulae can be adopted. The Court has to examine the facts and circumstances of each case. Extraordinary method of proving or disproving the facts in a judicial proceeding by affidavits is an extraordinary method permitted in interlocutory matters only to save time in the disposal of the proceedings in which Court does not decide the rights of the parties finally. It should always be remembered that Court has always its inherent powers to pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court and, thus, in a given case, if facts warrant calling the deponents of the affidavits, the Court may permit their cross-examination. In a particular factsituation, the Court may find cross-examination necessary for satisfying itself about the truth of the averments in the affidavit, but the party must insist for examination of deponent and there must be bonafide reasons. Though the order to be passed may be interim in nature but may seriously prejudice the cause of the other party, therefore, Court has to pass order on such an application considering all pros and cons of the case."

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12. The Hon'ble Supreme Court in a recent decision in the case of **Shruti Manav Sharma & Another (supra)**, has observed as under:

"**20.** The single most important proposition governing these appeals is that an interlocutory injunction decides nothing; it is a holding operation, so that the trial, when it comes, is not a barren exercise. Lord Diplock's classical formulation[5], has been adopted verbatim in India:

> "*The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.*"

24. The threshold for a *prima facie* case is a modest one. It does not require proof of title; it requires only that the claim not be frivolous or vexatious - a serious question to be tried. A *prima facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a *prima facie* case had been made out, the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and as to whether that was the only conclusion which could be arrived at on that evidence[9].

37. Before parting with these appeals, we consider it necessary to record our disquiet at a recurring feature of

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orders passed under Order XXXIX of the Code, and of appellate orders reviewing them, that reach this Court. Such orders are, with increasing frequency, running into pages of close analysis of the rival documents, weighing the probable outcome of issues of title, undue influence or fraud, and expressing views, in substance, on which party is likely to succeed at trial. Orders become lengthy for a single reason: the court passing them has, whether consciously or not, entered upon the final merits of the controversy and conducted what is, in substance, a mini-trial upon affidavits and documents that properly await the leading of evidence.

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38. This is not what Order XXXIX requires, nor what the law permits - whether of the court of first instance or of an appellate court reviewing it. Lord Diplock's caution[16], that the interlocutory stage is not the occasion to resolve conflicts of evidence on affidavit or to decide difficult questions of law calling for mature consideration, has been consistently accepted in India. This Court[17], emphasised the court's reluctance to decide difficult questions of law or fact at the interlocutory stage. The scope of examination on an application under Order XXXIX - and, equally, of an appeal against an order made on such an application - is confined to the limited and threshold question whether the plaintiff has shown a serious dispute meriting investigation at trial; it does not extend to an examination of the final effect, probative value or ultimate merits of the documents annexed to the pleadings, which is the trial court's task, to be undertaken after evidence and not before.

39. Measured against this standard, the judgments of the learned Single Judge as well as the Division Bench bear the marks of a mini-trial. Having correctly stated the limited standard of appellate interference laid down in *Wander Ltd.* (supra) that interference is warranted only where the discretion below has been exercised arbitrarily, capriciously, perversely, or contrary to settled principles of law regulating the grant or refusal of temporary injunctions. The Division Bench proceeded, over twelve detailed findings, to construe individual clauses of the Will dated 26.03.2004, to weigh the effect of delay and of admissions said to have been made in a separate suit, to apply Section 89 of the Companies Act, 2013 to the facts, and to assess whether a "clear *prima facie* nexus" had been demonstrated between specific acquisitions and specific proceeds. Each of these is a matter of substance properly reserved for trial; none of them is a matter upon which an appellate court, confined to asking whether the Single Judge's discretion was perversely or arbitrarily exercised, may substitute its own appreciation of the evidence.

40. We accordingly do not approve the practice of writing lengthy, merits-laden orders, whether at the interlocutory stage or in appeal from it, on applications for temporary injunction, and emphasise that courts confine such orders to recording, with reasons, their findings on the three settled conditions of *prima facie* case, balance of convenience and irreparable injury, without embarking upon an examination of the final merits or the probable outcome of the issues that properly arise for trial."

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13. In the present case, the principal objection of the respondents is that the attorney holder may not possess personal knowledge of all the events referred to in the affidavit. Such an objection may certainly be considered by the Commercial Court while assessing the evidentiary worth of the affidavit. However, the mere existence of such an objection does not, by itself, necessitate cross-examination.

14. The question whether the requirements of Rule 4(1) of the Rajasthan Arbitration Rules, 2003 have been duly complied with is also distinct from the question whether the attorney holder should be subjected to cross-examination. The Commercial Court is required to examine whether the conditions prescribed under the said Rule stand satisfied. Cross-examination cannot be treated as the inevitable or exclusive mode of addressing such a deficiency.

15. This Court finds that the impugned order does not sufficiently demonstrate statutory requirement of cross-examination of the attorney holder in proceedings under Section 9 of the Act of 1996. The direction, in the circumstances, is likely to enlarge the scope of the proceedings beyond what is necessary for deciding the application for interim protection.

16. This Court is conscious that the Commercial Court possesses discretion under Order XIX Rule 2 CPC. Nevertheless, such discretion must be exercised in furtherance of the object of Section 9 of the Act of 1996 and not in a manner which unnecessarily delays the consideration of an application seeking interim measures. The Court is not required to determine the truth

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or otherwise of every disputed factual assertion at this stage; it is required to form a prima facie view on the basis of the material available and decide the necessity of interim protection.

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17. In view of the aforesaid, this Court is of the considered opinion that the direction for cross-examination of the attorney holder, in the facts and circumstances of the present case, was not warranted. The impugned order suffers from an improper exercise of discretion and is liable to be interfered with in the supervisory jurisdiction of this Court.

18. Consequently, the writ petition filed by the petitioner is allowed. Order dated 10.09.2026 passed by the Commercial Court is hereby quashed and set aside and the application filed by the respondents under Order XIX Rule 2 read with Section 151 CPC stands dismissed.

19. Looking to the very nature of proceedings, the Commercial Court is expected to decide the application under Section 9 of the Act of 1996 expeditiously, preferably within four weeks from the date of receipt of a certified copy of this order, without being influenced by any observation made herein. Needless to observe that the observations made herein are confined to the question of cross-examination and shall not be construed as an expression of opinion on the merits of the disputes between the parties.

20. Pending application (s), if any, shall also stand disposed of.

(ANAND SHARMA),J

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