

Order below below Exhibit-44 in Regular Civil Suit No.41/2024

(Dilipbhai Bhimabhai Vadar & others Vs. Santokben Hamirbhai Muliyashiya)

1. The present application Exh.44 is filed by the defendant resorting the provision of Order 39, Rule 4 of C.P.C., 1908, praying to vary/lift the injunction passed against the defendant on the ground that the Hon'ble High Court of Gujarat in S.C.A. No. 7699/2025 has granted liberty to the defendant to file the application under Order 39, Rule 4 of C.P.C., 1908. It is contended by the Ld. Advocate for the defendant that no mandatory injunction is prayed in the plaint and therefore, in absence of any pleading no such injunction can be granted, and hence stated to vacate the said injunction.

2. It is further argued by the Ld. Advocate for the defendant that there is alternate way to the plaintiff and the same is very much eloquent from Mark 45/1, i.e. sale deed, and hence the said fact being suppressed by the plaintiff and injunction against the defendant causes hardship to the defendant, and therefore, prayed to lift the

said injunction.

3. It is further contended by the Ld. Advocate for the defendant that the plaintiff has not joined the lessee to whom the defendant had executed the lease deed, and hence the conduct of the plaintiff being malicious one, the injunction ought not be granted, and therefore, prayed to allow the said Exh.44. The Ld. Advocate for the defendant namely i.e. the applicant of the present application has relied upon following case laws.

1. Special Leave to Appeal No. 8989/2010.
2. 2012 (8) SCC, Page No. 148.
3. 2012 (2) GLH, Page No. 61.

4. Per contra, the Ld. Advocate for the plaintiff has filed reply to the said application Exh. 44, vide Exh. 46 and argued that Exh. 5 and Exh. 21 are decided after offering the opportunity to the defendant, and hence order passed below said Exh. 5 and Exh. 21 can not be vacated unless there is change in circumstances and showing the fact that the same causes hardship to the defendant. Thus in absence of any change in circumstances, the present application is untenable, and therefore, prayed to reject the said application. It is further argued by the Ld. Advocate for the plaintiff that against the said injunction order the

defendant had approached Appellate Court by filing the Misc. Civil Appeal and the same is also rejected by the Appellate Court, confirming the order of injunction against the defendant and therefore, on the same count again and again the injunction application can not be agitated. Merely because the Hon'ble High Court of Gujarat has granted liberty to file the application under Order 39, Rule 4 of C.P.C., 1908, does not permit this Hon'ble Court to vacate/lift the injunction granted against the defendant unless defendant proves change in circumstances and undue hardship to the defendant and thus ultimately prayed to reject the said application Exh.44. The Ld. Advocate for the plaintiff has relied upon following case laws.

1. AIR 1998, Rajasthan, 279
2. AIR 1992, Rajasthan, 165

5. Before I deal with the said application certain admitted fact emerging on record are required to be looked into.

Admitted facts

1. Injunction is granted against the defendant after hearing the defendant.
2. The SCA No. 7699 of 2025 is withdrawn by the defendant.

3. The defendant has executed the lease deed of his property.
4. Mark 45/1 i.e. the Sale deed produced by the defendant is not of the said land.

With this admitted position the application Exh. 44 is required to be decided.

5. Before I venture to decide the application Exh. 44, the provisions under which the said application is filed is required to be quoted. Order 39, Rule 4 of C.P.C.,1908 reads as under:

Order 39, Rule 4 of C.P.C.

4. Order for injunction may be discharged, varied or set aside.

Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit support such application a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction

unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.

6. Thus as per the Order 39, Rule 4 of C.P.C., 1908 injunction shall not be discharge, varied or set aside, unless necessitated by a change in circumstances or the order caused undue hardship to the party against whom the injunction is granted. Thus the defendant has to show two requirements namely, change in circumstances and/or undue hardship, to pocket the order in his favour. Whether there is change in circumstances or not, if assessed, then no material has been placed by the defendant to show that circumstances has changed after the injunction being passed against the defendant. The defendant has approached the Hon'ble Appellate Court by filing M.C.A. No. 7/2024, wherein also the defendant was not successful to vacate the said injunction order. It is from the very beginning contention of the defendant that the plaintiff has alternate way, and hence

the say of the defendant replying on Exh. 45/1 is untenable. The said contention is also taken in reply to Exh.5 at Exh. 18. Thus when from the very beginning it is the defence of the defendant that the plaintiff has alternate way, then merely by producing sale deed vide Mark 45/1 will not change the circumstance, and thus when there is no change in circumstance after passing of order below Exh. 5 and Exh. 21, no relief under Order 39, Rule 4 can be granted to the defendant, as the said contention was already advanced by the Ld. Advocate for the defendant while arguing Exh. 5 and the same was rejected by the concerned Court, as well as Appellate Court in MCA No. 7/2024. Thus the very first elementary requirement of change in circumstances is not being satisfied by the defendant, and therefore the injunction can not be vacated and the said application of Exh. 44 can not be allowed.

7. Now whether undue hardship is being caused to the defendant if assessed, then the defendant has already executed lease deed of his land to a third party for construction of Petrol Pump. The same can be assessed from Para 6 of Written Statement Exh. 18. Thus hardship, if any, caused, then the same will be to lessee. The plaintiff has already executed the lease deed, and therefore when the defendant is unable to show the hardship, then the second requirement for Order 39, Rule 4 of C.P.C., 1908 i.e. undue

hardship is also absent, and hence the said Exh. 44 can not be granted. The lessee has not come before the court to agitate the fact of hardship. The contention of the applicant of Exh. 44 that the plaintiff has not joined the lessee can not be borrowed as original owner of the land bearing Survey No. 365 is the defendant. Thus when the twin requirement for resorting the provision of Order 39, Rule 4 of C.P.C., 1908 are not being satisfied by the applicant i.e. the defendant, the injunction order, passed below Exh. 5 and Exh. 21 after affording opportunity to defendant, can not be varied/set aside or modified, invoking the Order 39, Rule 4 or Section 151 of C.P.C. 1908. To address this contention it is vital to refer to the law laid down by **Hon'ble Gujarat High Court** in the matter of **Padmavati Paradise Vs. Kirtiben Dhaneshkumar Shah**, reported in **2012(2) GLH, page 61**, wherein in **Para 5.1** the **Hon'ble High Court of Gujarat** has observed as under:

Para 5.1

As per Order 39 Rule 4 of the Code of Civil Procedure, any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order. Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged,

varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstance, or unless the Court is satisfied that the order has caused undue hardship to that party. Under the circumstance, considering Order 39 Rule 4 of the Code of Civil Procedure an injunction which has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstance. Therefore, if a party against whom the injunction has been granted satisfies on submitting application that there are change in the circumstances the Court may in exercise of powers under Order 39 Rule of the Code of Civil Procedure vary or set aside or discharge the injunction granted earlier. Therefore, this Court is required consider whether subsequent Handwriting Expert report submitted by the FSL and rejecting "B" Summary submitted-to by Investigating Officer with respect to the the FIR filed against the respondents herein-original plaintiffs with respect to the Banachithi/agreement to sell of which specific performance is sought and taking cognizance of the

offence by the learned Magistrate against the respondents herein-original plaintiffs and issuing the process against the respondents herein-original plaintiffs for the offences under Sections 465, 468, 471 and 114 of the Indian Penal Code whether the same can be said to be change in the circumstances warranting exercise of powers under Order 39 Rule 4 of the Code of Civil Procedure?.

8. Thus when the injunction order is passed after giving an opportunity to the parties being heard, the same can not be varied or set aside unless the twin requirements of change in circumstances and/or undue hardship are brought forth. In the present matter the applicant has miserably failed to show the change in circumstances after the passing of order below Esh.5 and Exh.21 coupled with the fact that the applicant has also been unable to show what hardship is likely to be caused to the applicant if the injunction is not set aside or varied. The application Exh. 44 is absolutely silent regarding both these requirements, and therefore, the application Exh. 44 can not be granted.

9. The argument of the Ld. Advocate for the applicant/defendant that the plaintiff has suppressed the fact

of alternate way and has pocketed injunction which is causing hardship to the defendant, can not be borrowed as the said arguments were already canvassed at the time of hearing Exh. 5 and Exh. 21 and also canvassed before the Appellate Court in MCA No. 7/2024. Thus these argument are untenable for granting the said Exh. 44. The case laws relied on by the applicant i.e. Special Leave to Appeal No. 899 of 2010 is regarding criminal matter, wherein emphasis is on correction of the mistake if brought to the notice of the judge. However in the present matter the Ld. Advocate for the defendant is unable to show the mistake being committed by the Trial Court, and hence can not be applied to the facts on hand. The another case law of Union of India Vs. Ibrahim Uddin and Another, reported in 2012 (8) SCC, 148, is regarding relief not sought in pleading. In the present case, the relief of injunction is finding place in pleading i.e. Exh. 1, and therefore, this case law is also not applicable to the facts on hand. Even otherwise Exh. 5 is an interim relief and is all together seperate from main relief and can be prayed at any time and therefore the said case law also will not help the applicant.

10. Thus in absence of any iota of evidence regarding change in circumstances after passing of mandatory injunction order as well as undue hardship, the

said application can not be granted in view of law laid down by Hon'ble Gujarat High Court in the matter of **Padmavati Paradise Vs. Kirtiben Dhaneshkumar Shah**, reported in **2012(2) GLH, page 61**, and hence following final order is passed below Exh.44.

-:: O R D E R ::-

[1] The present application Exh. 44 is hereby **rejected**.

[2] There shall be no order as to cost.

Pronounced today on this **17th day of October, 2025** in the Open Court.

Date :17/10/2025

Place:Vanthali.

(Lalitkumar Indravadan Ingale)

Additional Senior Civil Judge

Vanthali

(Code -GJ01372)