



**Order below Exh. No. 102 in R.C.S. No. 427/2006.**

This is an application filed by the defendant No. 1 under Order XXXIX, Rule 4 for setting aside the order passed below Exh. 5 i.e. the temporary injunction order passed in favour of the plaintiff. Perused the application and say. Heard both at length.

2. It is contended by the learned advocate for defendant No. 1 that the order passed below Exh. 5 of temporary injunction is obtained by the plaintiff by concealing the material facts. He submitted that, the possession of the suit property is not with the plaintiff. But the plaintiff pretended that, he is in possession of the suit property and obtained the temporary order in his favour. After passing the police protection order the police submitted report that both parties are unable to showing their respective properties. Therefore, he further submitted that, on perusal of said police report it reveals that, the plaintiff is not in the possession of the suit property. Hence, he prayed that, the order of temporary injunction passed at Exh. 5 may be set aside.

3. The learned advocate for the plaintiff contended that, the defendant has filed the misconceived application. He further submitted that, merely on the basis of the said police report it cannot be said that, the plaintiff is not in the possession of the suit property. The order below Exh. 5 was passed on after considering

the material on record. Therefore, the order of temporary injunction is passed purely on merits. Therefore, there is no material on record to show that the plaintiff has obtained the said order after concealing the material facts. Hence, the application may kindly be rejected.

4. Under Order XXXIX, Rule 4 the order for injunction may be discharged or set aside under specific circumstances when the order of temporary injunction is obtained after hearing both the parties then it cannot be set aside. If there is changed in circumstances and facts, Court has satisfied that the order has caused undue hardship to other party. In the case in hand the said report of the police reads as “on perusal of record of the land it is not clear that which land is bought by the plaintiff and the defendants.” Therefore, merely on such kind of report it cannot be said that, the plaintiff is not in possession of the suit property. The order passed below Exh. 5 was passed after considering the facts on merits by my learned predecessor. Hence, here is no substantial material put forth by the defendant No. 1 to hold that, the order below Exh. 5 was obtained by concealing the fact that the plaintiff was not in possession of the suit property. Hence, the application deserves to be rejected. Hence, I pass following order :-

### **ORDER**

Application is rejected.

Date: 20/06/2019.  
Sangamner.

(P.D. Kolekar)  
Jt. Civil Judge, Junior Division,  
Sangamner.