


MHSN060025302023 	<u>ORDER BELOW EXH.42 RCS NO.302/2023</u> [Mumtaj Ajij Inamdar Vs. Aapasobabu Kalawant] (Passed on 07 th March, 2026)
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Perused application and say. Heard learned Advocate for plaintiffs and defendants. Hence, considering application, say and arguments advanced by both parties, following points arise for determination & findings reasons for the reasons ensued thereon :-

Sr.No.	Points	Findings
1.	Whether plaintiffs proves the <i>prima-facie</i> case ?	Negative.
2.	Whether balance of convenience tilts in favour of plaintiffs ?	Negative.
3.	Whether plaintiffs will suffer irreparable loss if injunction is granted ?	Negative.
4.	What order ?	As per final order.

REASONS

As to Point No.1 :-

02. It is the contention of plaintiffs that, as per order below Exh.22, the injunction is granted and restrained from causing obstructions and interference from repairing the toilet. However, the defendants by taking undue advantage of the order to dismantle the toilet and now going to construct the toilet. The defendants by filing say objected and submitted that, the plaintiffs have obstructed while repairing the toilet and dismantled the toilet. The defendants have given complaint to the Police Station. The Police have denied to register the complaint.

03. The learned Advocate for the plaintiffs submitted that there is no alternative toilet. The defendants have destroyed the structure and this is the unlawful act and breach of injunction order. Therefore, it is required to maintain status quo over the suit property. *Per contra*, the Learned Advocate for the defendants submitted that, there is separate toilet and bathroom. The shares of parties are not decided till today. There is no change in circumstances to file this application. No irreparable loss to the plaintiffs. If plaintiff is aggrieved by the order below Exh.22, then they have to file an appeal. They cannot challenge the order by way of this application.

04. Perused record. The plaintiffs have filed photographs of the suit property. It shows that, the toilet has been dismantled. It is the suit for partition and separate possession. The objection that, plaintiffs have obstructed and destroyed the structure is the part of trial. Now, there is no toilet over the suit property. There is no toilet for use of defendants. Therefore, in this situation, if restrained to defendants then there would be restrained from using essential needs. If the defendants are restrained from constructing them, it would be inconvenient to the defendants more than plaintiffs. Moreover, this is the suit for partition and separate possession. Needless to state here that, the defendants are well aware about the nature of suit. Even, it is constructed and the area where the toilet is constructed went to the share of plaintiffs in that case defendants are bound by decree. *Prima-facie*, at this juncture, it cannot be ascertained the area of suit property where defendants are trying to construct would belongs to

exclusively by the plaintiffs. There is no ground to restrain the defendants from creating constructing over the suit property. There is no *prima-facie* case in favour of plaintiffs. Hence, I answer point No.1 in the negative.

As to Point No.2 & 3 :-

05. Balance of convenience is the balancing of the rights. The plaintiffs filed the application for restraining the defendants from the construction of toilet, if injunction is granted, then defendants are unable to use the toilet. The matter taking its own time to conclude. Thus, in such circumstances if defendants are restrained, the they will suffer irreparable loss. Hence, I answer point No.2 and 3 in the negative.

As to Point No.4 :-

05. Having answers to Point No.1 to 3 in the negative, I proceed to pass the following order :-

ORDER

1. Application is rejected.
2. Cost in main cause.

Place : Miraj.
Date : 07/03/2026.

(Pravin U. Kulkarni)
Jt. Civil Judge Jr. Dn., Miraj.