

Mr. Raghunath Bhimrao Javalkar ... though its POA holder Mr. Suryakant P Bhunde and Anr.	Respondents
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Mr. Chaitanya Nikte with Mr. Prajit Sahane and Rtiwij Kale, for the petitioner.

CORAM : N.J. JAMADAR, J.

DATE : 11TH MARCH 2025.

PC:

1. Heard learned counsel for the petitioner.
2. The challenge in this petition is to the judgment and order dated 7th May 2024 passed by the learned District Judge, Pune in Misc. Civil Appeal No. 69 of 2024, whereby the appeal preferred by the petitioner against an order dated 12th March 2024 passed by the trial Court refusing to vacate the order of injunction, came to be rejected.
3. The respondent no. 1 had preferred a suit for specific performance of the contract of sale contained in an earnest note purportedly executed by the Secretary of the Society, who has been

impleaded as defendant no. 2. In the said suit, an application for temporary injunction to restrain the defendants from alienating the suit property, till the disposal of the suit came to be filed. The said application had proceeded ex-parte. By an order dated 4th February 2023, the learned Civil Judge was persuaded to allow the said application. The petitioner- defendant no. 1, Society appeared and filed an application to vacate the said the order of temporary injunction, under Order XXXIX, Rule 4 of the Code of Civil Procedure. It was *inter alia* alleged that there was material supersession of facts and collusion between the plaintiff and defendant no. 2, the then Secretary of the Society.

4. By an order dated 12th March 2024, the learned Civil Judge was persuaded to reject the said application, finding that no case was made out for vacating the interim order under Order XXXIX, Rule 4 of the Code. The learned District Judge found no error in the exercise of jurisdiction by the trial Court.

5. The learned counsel for the petitioner took the Court through the averments in the plaint and the earnest note on the strength of which the suit came to be instituted. It was submitted that substantial consideration was credited to the personal account of defendant no. 2. Only a sum of Rs. 7 lakh was credited to the account of defendant no. 1 society, which also was subsequently returned. An endeavour was made to draw home the point that the correct address of the society was not deliberately mentioned in the suit and the pre-suit notice was also not given to Mr. Sur, the Chairman of the defendant no. 1, Society though it seemed to have been addressed to

him.

6. I have perused the material on record. The trial Court as well as District Judge have found that: 1) the address of the defendant no. 2 mentioned in the cause title of the plaint is the same which was mentioned in an appeal preferred by the defendant no. 1 society before the revenue authority, 2) the defendant no. 2 was incontestably the Secretary of the society when the agreement was executed and the orders were passed by the Courts below, 3) Mr. Sur, the Chairman of the society, is shown to have signed the earnest note as a witness thereto.

7. These facts, prima facie, run counter to the submissions sought to be canvassed on behalf of the petitioner. It is true that the order was passed without hearing the defendant no. 1 Society as the application proceeded ex-parte. However, to exercise the power to vacate the order of injunction, in addition to the fact that the injunction was granted without notice to the defendant, it has to be shown that the plaintiff has knowingly made a false or misleading statement in relation to a material particular or there is gross suppression of material facts.

8. From the averments in the plaint and the material annexed with the plaint, such an inference can not be prima facie drawn. The issues sought to be urged on behalf of the petitioner are the disputed questions which cannot be legitimately determined in an application for vacation of the injunction order.

9. In the aforesaid view of the matter, the impugned order

does not suffer such infirmity as to warrant interference by this Court in exercise of supervisory jurisdiction.

10. The petition stands dismissed.

11. It is, however, clarified that the consideration is confined to test the legality, propriety and correctness of the impugned order passed under Order XXXIX Rule 4 of the Code and the Courts shall not influenced by the observations in this order while deciding the other applications or adjudicating the suit.

(N.J. JAMADAR, J.)