



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**WRIT PETITION NO.2546/2024**

**Roshan Fagu Mohurle and others**

**...Versus...**

**Smt. Anjanabai Mallesh Balsanwar and others**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions  
and Registrar's orders  
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Court's or Judge's orders

Mr. V.R. Mishra, Advocate for petitioners  
Mr. N.R. Tekade, Advocate for respondents

**CORAM : SACHIN S. DESHMUKH, J.**

**DATE : 05/08/2025**

1. The petitioners, original plaintiffs, have presented the suit seeking temporary injunction. The learned trial Court initially considered the application and granted injunction against the respondents. In the interregnum, the measurement was carried out on 25/11/2021 in the presence of petitioners herein, wherein it is revealed that the petitioners are not in possession of suit land.

2. In the wake of measurement report, an application was presented by the defendants/respondents under Order 39 Rule 4 of the Code of Civil Procedure, requesting to modify the order of injunction. The trial Court, upon recording prima facie finding that the petitioners are not in possession, by its order dated 01/07/2023 modified its initial order. The said order was subjected to challenge in Misc. Civil Appeal before the Principal District Judge, Gondia, also

endorsed the finding in relation to prima facie possession of the respondents. As such, the order of modification with specific finding that the petitioners have failed to establish prima facie case.

3. It is the contention of the petitioners that the application so presented by the respondents is not as contemplated under Order 39 Rule 4 of the Code of Civil Procedure, however, his submission is in ignorance of second proviso to the same, which unequivocally entails the Court to consider variation or setting aside the application of the order of injunction by change in the circumstance.

4. Since the Courts below have exercised the discretion while not considering the prayer of the petitioners for grant of interim injunction and in absence of any perversity to the same, it cannot be substituted.

5. The event which has occurred on 25/11/2021 of carrying out the measurement in presence of petitioners establishing the fact of possession is not with petitioner, has to be regarded as a change in circumstance.

6. So far as the legal position, in light of the judgment of the Hon'ble Apex Court in the case of ***Wander Ltd. And Anr. Vs. Antox India P. Ltd. 1990 SUPP (1)SCC727*** vis-a-vis ***Mohd. Mehtab Khan and others Vs. Khushunma Ibrahim and others AIR 2013 SC 1099***, it has been laid down that the principles in relation to exercise of discretion, the same cannot be substituted where both the Courts below have taken into account that the petitioner is not in possession in the light of measurement indicating and establishing actual possession of Respondent. Therefore, the exercise of discretion

has been rightly declined by the Courts below. As such, same need not be substituted by this Court in absence of any justifiable reasons, when same is properly exercised.

7. As such, no error could be noted in the order rendered by the Courts below. Resultantly, the writ petition is dismissed. No costs.

**(SACHIN S. DESHMUKH, J.)**

Wadkar