IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.14026 OF 2025
IN
CIVIL APPLICATION NO.11824 OF 2024
IN
FIRST APPEAL NO.1400 OF 2024

01. Amit s/o Rasiklal Kothari,
Age-46 yrs., Occu.-Business,

02. Shweta w/o Amit Kothari,
Age-45 yrs., Occu,-Business,
Both r/o-Chandrkor, Maniknagar,
Nagar-Pune Road, Ahilyanagar/
Ahmednagar. ...Applicants.

In the Matter in Between :

Excellent Constructions Pvt. Ltd.
11 Indian Mercantile Insurance
Building, 4 ORE, V.B. Gandhi Marg,
Mumbai.
By its duly authorized signatory
Rajan Bulchand Age: 59 years,
Occu.: Service, R/o Nicolas Estevanez 21,
Las Palmas 35007, Spain.
At present having address at 202,
Aspect Tower, Business Bay, Dubai ...Applicant.

Versus

1. Seema Sharad Mutha
Age: Adult, Occu.: Business,

2. Shilpa Sharad Mutha
Age: Adult, Occu.: Business,
Both R/o 83, Maniknagar,
Nagar-Pune Road, Ahmednagar.
3. Sharad Mansukhlal Mutha

(Since died on 25.03.2019,
through his Lrs)

3A. Mangala Sharad Mutha
Age: 68 years, Occu.: Business,

3B. Nirmal Sharad Mutha
Age: 41 years, Occu.: Business,

3C. Shilpa Sharad Mutha,
Age: 46 years, Occu.: Business,

3D. Seema Sharad Mutha
(Original Defendant No.1)
Age: 43 years, Occ.: Business,

4. M/s Sharad Mutha Housing
Development Ltd.
83, Maniknagar, Nagar-Pune Road,
Ahmednagar By its Directors

4A. Ashok Bansilal Mutha
Age: Adult, Occ.: Business,
R/o 83, Maniknagar, Nagar-Pune Road,
Ahmednagar.

4B. Mansukhlal Manikchand Mutha (Deceased)

4C. Sharad Mansukhlal Mutha (Deceased)

5. Zarip Khan Wallikhan
Age: Adult, Occu.: Business,
R/o Dinshaw House, 6th Floor,
Above Oriental Bank, Synagogue Stree,
Camp, Pune.

6. Amit Rasiklal Kothari
Age: 44 years, Occu.: Business,
R/o Chandrakor, Maniknagar,
Station Road, Ahmednagar

7. Shweta Amit Kothari
Age: 43 years, Occu.: Business,
R/o Chandrakor, Maniknagar,
Station Road, Ahmednagar.

8. Saten Champala Gundecha
Age: 48 years, Occu.: Agri. & Business,
R/o Survey No. 131, F-5, Maniknagar,
Chandan Estate Road, Ahmednagar ....Respondent.

Mr. N. B. Khandare, Senior Advocate, i/b. Mr. Ajeet Gholap, Advocate for Applicants.
Mr. V. D. Sapkal, Senior Advocate, i/b. Mr. Pratik P. Kothare, Advocate for Respondents.

Coram : KISHORE C. SANT &
NEERAJ P. DHOTE, JJ.
Reserved on : 13th OCTOBER 2026.
Pronounced on : 4th NOVEMBER 2026.
(Through Video Conferencing)

JUDGMENT : (PER NEERAJ P. DHOTE, J.)

1. This is an application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 ('**CPC**') for modification of the order dated 5th February 2025 ('**said order**')passed by this Court in Civil Application No.11824 of 2024, allowing the application and restraining the Applicants from creating third party rights or interest in the land situated at Gat No. 327 at Village Bhingar, Taluka Ahmednagar, District Ahmednagar, being in two portions admeasuring 4 Hectare 80 Ares and 1 Hectare 61 Ares, purchased by the Sale Deeds Nos.2459 of 2021 and 2764 of 2021 registered on 31st

March 2021 and 4th May 2021 respectively, with the office of Sub-Registrar, Ahmednagar-2.

2. Heard the learned Senior Counsel for the Applicants and the learned Senior Counsel for the Respondent No.1 (original Appellant/ Plaintiff).

a) It is submitted by learned senior counsel for the Applicants that, against the said order dated 5th February 2025, the Applicants had approached the Hon'ble Supreme Court of India in SLP (Civil) Diary No.22947 of 2025 and the said SLP was withdrawn by the Applicants with liberty to move this Court seeking modification of the said order. This application for modification of the order is made on two grounds: change in circumstances and undue hardship. The provisions of Rule 4 of Order XXXIX of CPC provides for modification of the order on the said grounds. The Applicants had purchased the suit property, as it was the freehold property. Before purchasing the suit property, due care and caution was taken by the Applicants. The search of title was made and reports were sought as to whether there was encumbrance on the suit property and after ascertaining that, there was no charge on the suit property, the same was purchased. The civil suit for recovery filed by the Respondent No. 1 was for Rs.3,86,00,000/-. The Applicants raised loan from the bank by mortgaging the suit property. The bank has sought the copy of the said

order of injunction passed by this Court. The Applicants made available the copy of the order of this Court to the bank. The bank have asked for mortgaging another property against the loan which the Applicant had taken. Whatever property is with the original Defendants against whom the suit is filed, was sufficient to protect the interest of Respondent No.1. The Respondent No.1 was sufficiently protected by virtue of the injunction order granted against the other Respondents/ original Defendants. The copy of the Valuation Certificate shows that, the other part of the suit property, which was with the other Defendants was valued for more than Rs.Six (6) Crores, which was much higher than the amount of recovery for which the civil suit was filed. The Applicants were subsequently added in the first appeal. The Applicants, after purchasing the suit property, converted the same into plots and have entered into agreements with various persons to sell the plots. Due to the injunction order, the Applicants were not able to sell the property and are unable to repay the loan of the bank. The bank will proceed with the Applicants, which will cause undue hardship to the Applicants. The injunction was an excess injunction against the claim of the Respondent No.1. After the injunction order, the Applicants received the notice from the bank and this was the change in circumstance. The bank is likely to file the proceedings against the Applicants for recovery of the loan. Even if the injunction is granted

after hearing the Applicants, under the changed circumstance and due to undue hardship, the application is filed under the said provision of CPC. The civil suit filed by Respondent No.1 came to be dismissed and the injunction is granted in the first appeal. The Civil Court recorded the findings that nothing was proved. Considering the change in circumstances and undue hardship, the application be allowed as everything has come to a standstill and the Applicants were unable to develop the property due to the injunction order.

b) It is submitted by the learned Senior Counsel for the Respondent No.1 that, the order passed by Hon'ble Supreme Court of India in the aforesaid SLP, which was filed by the Applicants shows that, the matter was argued at length and thereafter permission was sought to withdraw the SLP with liberty to file the application for modification before this Court. This itself shows that, when the Applicants found that it was not possible to succeed, the said liberty was sought. After the dismissal of the SLP, the Applicants procured the letter dated 7th November 2025 from the bank and filed this application. The Applicants had agitated before this Court that, they had taken loan from the bank, and this Court was aware of the same when the order sought to be modified was passed. There was no change in the circumstances. What the provisions of Order XXXIX requires is a substantial change and not a cosmetic change. The same

thing is being agitated, which was agitated before this Court when the order was passed. Paragraph 8 of the order shows that, the Applicants had filed their detailed reply to the application for injunction and this Court perused the said Affidavit-in-Reply and after hearing both the sides passed the order granting injunction. Everything was argued before this Court, which is now being argued. The order, which is sought to be modified, shows that the suit property was purchased by the Applicants, when there was injunction granted by the learned Trial Court. Despite the injunction order not to create third-party interest, the other Defendants sold major portion of the suit land to the Applicants. Since the transaction took place, when injunction order was in operation, the sale deed would necessarily be invalid. Not only this, there is separate order passed against the other Respondents/Defendants. When the Respondent No.1 came to know that, the suit property was sold during operation of the injunction, the Applicants came to be added as parties to the appeal. This Application is in the form of review. The provisions of Order XXXIX Rule 4 shows that, the application can be considered only on two grounds: i) if there is a misleading statement and ii) there is change in circumstance. In every injunction, there is hardship to the party against whom the order is passed. However, it is required to be established that the injunction, which is granted causes undue hardship. There was no case of undue

hardship to the Applicants and none of the grounds in the application satisfies the provisions of Order XXXIX Rule 4 of CPC. As the points, which are agitated in the application, were already agitated before this Court and this Court by hearing both the sides have passed the order, which is sought to be modified, the Application is liable to be dismissed. In case the order is modified, nothing would remain in the matter. As far as the aspect of valuation of the property is concerned, this Court already taken care in the earlier order.

3. The Applicants are the Respondent Nos. 6 and 7 in the first appeal. The Respondent No.1 in the application is the Appellant and original Plaintiff. The brief factual aspects of the matter as incorporated in the order dated 5th February 2025 passed in Civil Application No. 11824 of 2024 in the First Appeal are reproduced below for reference:

> *"5. The special suit (116 of 2002) was filed by "Excellent Constructions Pvt. Ltd.", a company registered under the Companies Act, against Respondent Nos. 1 to 5 herein. It is a suit for recovery of a sum, little over Rs.43 crores with a further prayer for realisation of the said amount by sale of the agricultural lands, Gut Nos. 326/1 and 327, mortgaged by the original defendants in favour of the plaintiff – company for securing a loan of Rs.3 crores raised from IndusInd Bank. The record indicates the person, who operate or run the business of the plaintiff – company, was based in foreign country (Spain). The original defendants / Respondent Nos. 1 to 4 made a*

default in repayment of the loan. The plaintiff – company came with a case to have repaid the entire loan amount. According to the company, an agreement dated 02nd May, 1997 was entered into between the plaintiff – company and the original defendants. It was agreed that the defendants would pay the plaintiff – company interest @ 18% p.a. for initial period and thereafter 2.5% p.m. besides funding charges @ 3% p.m. The transaction took place way back in 1997. According to the plaintiff – company, since the amount was not paid, it swelled equal to the amount claimed in the suit.

6. Pending the suit, there was injunction order restraining the original defendants from creating third party interest in respect of the lands (Gut Nos. 326/1 and 327) (suit lands). Inspite of the same, the defendants sold major portion of the suit lands to Respondent Nos.6 to 8 herein. Since the transaction took place when the injunction order was in operation, the sale-deed would necessarily be invalid. However, the suit was dismissed on merits. Meaning thereby, the injunction that was operating, stood vacated.

7. Against the judgment and decree dismissing the plaintiff's suit, the first appeal, wherein the present application has been moved, came to be filed. We have admitted the appeal. Needless to mention, the appeal is continuation of the original suit. The sale transactions that took place were first invalid in view of there being injunction order and would also be subject to the principle of lis pendens."

4. The Appellant filed the aforesaid Civil Application No. 11824 of 2024 with the following prayers :

"(b) To grant mandatory / permanent injunction restraining Respondent Nos. 6 to 9 from creating third party rights or interests in the land lying and situate at Gut No. 327 at Village Bhingar, Tal. Nagar, Dist. Ahmednagar being two portions of land admeasuring 4 hector 80 ares and 1 hector 61 ares purchased in view of the Sale Deeds bearing Nos. 2459/2021 and 2764/2021 registered on 31.03.2021 and 04.05.2021 with the office of Sub-Registrar, Ahmednagar-2;

(b)-1 Pending hearing and final disposal of the above Appeal, by an order and/or direction restrain/injunct Respondent No.6 to 9 from creating third party rights or interests in the land lying and situate at Gut No. 327 at Village Bhingar, Tal. Nagar, Dist. Ahmednagar being two portions of land admeasuring 4 hector 80 ares and 1 hector 61 ares purchased in view of the Sale Deeds bearing Nos. 2459/2021 and 2764/2021 registered on 31.03.2021 and 04.05.2021 with the office of Sub-Registrar, Ahmednagar- 2;"

5. The present Applicants have filed their detailed say to the said application. After hearing the parties, Application No.11824 of 2024 came to be allowed in terms of prayer clause (b)-1.

6. The Applicants have invoked the provisions of Order XXXIX Rule 4 of the CPC. The said provision reads as under :

*"**Order XXXIX : — Temporary Injunctions and Interlocutory Orders :***
1)....
2)....
3)....
*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 supporting 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 an 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."

7. The Applicants have prayed for discharge of the said order granting injunction on the ground of change in circumstances and undue hardship. The learned counsel for the Applicants tendered the copies of the communication dated 7th November 2025 written by the bank/co-operative society, communication dated 11th November 2025 written by the Applicants to the bank/co-operative society and communication dated 19th November 2025 written by the bank/co-operative society to the Applicants. By the communication dated 7th November 2025, the bank/co-operative society asked the Applicants to provide a copy of the order of this Court granting injunction. The communication dated 11th November 2025 is the response by the Applicants to the said letter dated 7th November 2025, providing the copy of the order dated 5th February 2025

and informing the order of injunction in respect of the suit property Gat No.327. By communication dated 19th November 2025, the bank/co-operative society asked the Applicants to mortgage another property against the loan and to repay the loan within a period of two months.

8. On going through the said communications, they are in respect of the order passed by this court and in respect of repayment of loan by the Applicants to the Bank/co-operative society. Another document, i.e., the valuation report of the suit property. They cannot be termed as the change in circumstances, so as to modify the injunction order. The reply, which was filed by the Applicants to the Civil Application No.11824 of 2024 shows that, the contentions which are raised by the learned Senior Counsel in support of the present application were agitated before this Court. The reply shows that, the Applicants had pleaded that, the interest of the Appellant was sufficiently secured by the unsold property, the development of the subject property such as construction of concrete roads, gutters, etc. and recording of charge by the bank/society by way of mortgage before the date of dismissal of the suit. Paragraph 9 of the order sought to be modified or varied shows that, this Court considered the submissions advanced, perused the pleadings and the evidence adduced in the suit and for the reasons recorded, allowed the application. Further, it is not the case that only because this Court passed the injunction order in

the matter, the Bank/Co-operative Society raised the demand to repay the loan. Repayment of loan in any case is the condition precedent before advancing the loan. Thus, the ground of undue hardship has no legs to stand. In this view of the matter, in our considered view, no case is made out to exercise the power under Rule 4 of Order XXXIX of the CPC and hence the Application is dismissed.

[NEERAJ P. DHOTE, J.] [KISHORE C. SANT, J.]