**APPLICATION UNDER ORDER 39 RULE 4 CPC FOR DISCHARGE OR VARIATION OF INTERIM INJUNCTION ORDER.**

IN THE COURT OF....................

AB.................................................................... Plaintiff

*versus*

CD............................................................... Defendant.

**APPLICATION UNDER ORDER XXXIX RULE 4, C. P. C. FOR DISCHARGE OR VARIATION OF INTERIM INJUNCTION ORDER**

Sir,

That the defendant abovenamed most respectfully submits as under:

1. That the plaintiff has obtained an interim injunction as to maintain *status quo* till the disposal of the suit on.................... by making and presenting a forged and fabricated agreement to sell the property in suit for Rs..................:.. and showing the false receipt of Rs..................... from the defendant in respect of the aforesaid false and fabricated transaction. The plaintiff has made a false and forged thumb impression of the defendant on the aforesaid agreement-deed which is dated ..................... The thumb impressions on the said deed of agreement are not the thumb impressions of the defendant but of some other person who might have connived with the plaintiff along with the witnesses thereto. Moreover the plaintiff has expressly defamed the defendant by calling her a cunning lady in the plaint.

2. That the plaintiff has not so far paid proper court fees on the plaint and has gone in revision before the learned District Judge, simply to harass the defendant and to delay the disposal of the suit and to bring the defendant, an old lady to natural death in gross abuse of the process of law.

3. That the defendant wants to dispose of the property in suit for the proper settlement of the consideration between her legal heirs and successors and for the maintenance of herself, and it is expedient in the interest of justice that the defendant may be allowed to transfer the property in suit pendentelite subject to the conditions as this Hon’ble Court may deem fit to impose.

4. That the defendant undertakes that she will put an express condition in the transfer deed to the willing transferee, binding such transferee to abide by the decree and orders of this Hon’ble Court in the suit and to disclaim all rights and title thereto on the final decree of this Court if it goes against the defendant and the willing transferee.

5. That in the circumstances aforesaid it is further expedient that this Hon’ble Court may be pleased to make a variation in the interim injunction dated.................... allowing the defendant to transfer the property in suit to some willing transferee or transferees subject to the conditions as this Hon’ble Court may deem fit.

**PRAYER**

It is therefore most respectfully prayed that this Hon’ble Court may be pleased to discharge the interim injunction or to make a variation in the interim injunction dated.................... allowing the defendant to transfer the property in suit by sale to any willing persons purchasers subject to the conditions as this Hon’ble Court may deem fit in the circumstances of the case.

Advocate for defendant.

Place:....................

Dated:.................... 200

IN THE COURT OF....................

Suit No..................... /200

**In the Matter of:**

AB.................................................. Plaintiff/Petitioner

*versus*

CD............................................ Defendant/Respondent

**AFFIDAVIT**

I............................................................ resident of........... ......... do hereby solemnly affirm and declare as under: -

1. That I am the........................................ in this case and hence competent to swear this affidavit.

2. That the contents of the accompanying application are true and correct.

**DEPONENT**

**VERIFICATION**

Verified at.................... on this.................... day of.................... that the contents of the above affidavit are true and correct to my knowledge.

**DEPONENT.**

**UNDUE HARDSHIP CAN BE GROUND FOR VARIATION OF ORDER FOR INJUNCTION**

Undue hardship can be a ground for variation of an order for injunction under Order 39 Rule 4 of the Civil Procedure Code.1

**ARREST BEFORE JUDGEMENT OF DEFENDANT**

***Order 38, Rule 1***

An order of arrest before judgement of defendant is to be passed only where the plaintiff is able to make out a *prima facie* case and on being satisfied of the ingredients with regard to possible abscondance or disposal of the properties with intent to delay or obstruct the execution of the prospective decree. Merely because the defendant appears before the Court the relief to the plaintiff cannot be denied.2

**ORDER PASSED UNDER ORDER 38 RULE 1 CPC NOT APPEALABLE**

It is evident from Rule 1(2) of Order 43 that an order passed under Order 38, Rule 1 is not appealable in nature though an order under Rule 2 which is to be passed after the defendant is brought before the Court and where he fails to furnish security is appealable.3

1. Parmanaand Agarwal v. Sudera Enterprises Pvt. Ltd., 2000 (1) CCC 503 (Cal. ).

2. S. Selvarathinam v. Rajasekharan Nair, AIR 2001 Kerala 1.

3. S. Selvarathinam v. Rajasekharan Nair, AIR 2001 Kerala 1.