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**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT TARIKERE**

Present: Smt.Urmila.V. B.A.L., LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 14th Day of February 2025

ORIGINAL SUIT NO.114/2023

PLAINTIFF/s :

- 1) Jabar Kaleel S/o Bashu Sab, aged 50 years, Agriculturist,
- 2) Balkish Banu W/o Jabbar Kaleel, aged 45 years, Agriculturist,

Both are R/o 8th Cross, Kodi Camp,
Chikkamagaluru Road, Tarikere.

(Reptd. By : Sri S.Narayanarao, Advocate.)

Vs.

DEFENDANT/s:

T.G.Manjunatha S/o Gangadharappa,
aged 50 years, Agriculturist, R/o K.E.B.
Circle, Galihalli Extension, Tarikere.

(Reptd. By : Sri C.S.Shivaprasad, Advocate.)

PARTIES TO I.A.NO.XI

Applicant : T.G.Manjunatha

Vs.

Opponent : Jabar Kaleel and another

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i	Provision under which the application is filed	Under Section 151 of CPC
ii	Relief sought for	Set aside the order
iii	The date of which the application is filed	08.12.2022
iv	Number of application	I.A.No.XI
v	The date on which the objection are filed by different opponents	14.03.2023
vi	The date on which the orders were passed on the said application	14.02.2025

ORDER ON I.A.NO.XI

The applicant/defendant has filed this interlocutory application under Section 151 of CPC praying to set aside/change/expunge the order passing/drawing adverse inference against the defendant for not producing the documents No.2 and 3 sought in notice under Order XI Rule 16 in so far as adverse inference from prohibiting to produce the documents in future as per Order dated 18.11.2022 by allowing this application.

2. The I.A., is supported with the affidavit of the defendant. In the affidavit he has stated that, the plaintiff has

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filed notice under Order XI Rule 16 of CPC seeking production of certain documents claiming that they are in custody of the defendant. The defendant in fact had already marked as Ex.D.2 on 19.08.2022 and copy of the same was also served on the plaintiff. In spite of having knowledge the plaintiff has filed/issued notice calling to produce the document which was nothing but abuse of process of court. The document sought as per item No 2 & 3 were public documents and plaintiff could have obtained and produced the same. When the document was not in possession and certified copy could have obtained and produced by plaintiff drawing adverse inference against the defendant and prohibiting the defendant from producing the same at future date could not have been passed. Any such order is not prescribed under the provision and before passing any order on the said application defendant ought to have been heard. Therefore, the order dated 18.11.2022 in so far as drawing adverse inference and prohibiting and defendant is against to procedure law and is

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liable to be changed/expunged. It is further stated that first of all the application/notice itself was not in consonance with the provision and hence the order is not sustainable. The document sought as per item No.2 and 3 of notice being public document and not personal document the same does not come under the purview of provisions of Order XI Rule 16 of CPC. Therefore, the order passed on 18.11.2022 on notice to produced in so for as passing adverse inference and prohibiting defendant has to be set aside or to be changed or expunged. Hence, it is prayed to allow the I.A.

3. The copy of the I.A., served to the other side. The plaintiffs have filed the detailed objections and resisted the I.A., filed by the defendant and inter alia contended that the application filed by the defendant u/s 151 CPC for praying to set aside-change-expunge the order passed by this Court in respect of document No.2 and 3 summoned by the plaintiff by notice under Order 11 Rule 16 of CPC. After filing of the application the present defendant answered to the notice in

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respect of document summoned by the plaintiff. This Court after filing of the memo in respect of the application, passed the order dated 18.11.2022 as follows: *"The defendant counsel is given reply to the notice of plaintiff Under Order 11 Rule 16. The defendant produced the document No.1, 4, 5 as sought by the plaintiff to produce the said document from the custody of the defendant. The defendant in reply he has submitted that the document sought in the notice in Column No. 2 and 3 are not in the custody of defendant. Heard and perused the same. The adverse inference against the defendant Under Section 114 of Indian Evidence Act, the defendant is prohibited or restrained from producing the document sought in the notice in Column No. 2 and 3 at any stage of this suit. Hence matter is posted for cross of DW-1 by 18-12-2022."*

4. It is further contended that since 18.11.2022 to this day the defendant has not questioning the order passed by this Court under Order 11 Rule 16 CPC in any court. Neither the defendant challenging the said order before the appellate

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authority. The defendant neither preferred the appeal nor he has preferred the writ before the Hon'ble High Court of Karnataka in respect of order dated 18.12.2022. Now this defendant come up with this false application without challenging the order before this Court for set aside/change/expunge the order dated 18.11.2022. The defendant sworn a false affidavit before this Hon'ble Court. The plaintiff seeking the document from the defendant side as per the averments made in the written statement. The document summoned by the plaintiff no new document only what is stated in the written statement in respect of his defence without furnishing the document it is not possible to cross examine the defendant. Hence it is the foremost duty of the defendant he has produce the document what he has stated in the written statement. Once the defendant has submitted before the Court he has not having the copy, as per Section 114 of the Indian Evidence Act, it is very clear the benefit will goes to the plaintiff. Once the order passed by this

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Court, the same court cannot take back his order. The only option to the defendant is to challenge the said order before the appellate authority. When the matter is posted for cross examination of DW1 from 18.11.2022 to this day the defendant intentionally dragging the proceedings. The application filed by the defendant is not tenable under and the same is liable to be dismissed. Hence, it is prayed to reject the I.A., with exorbitant cost.

5. Heard arguments on both sides. Perused the materials placed on record.

6. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration are as under:

- 1) Whether the I.A.No.XI filed by the defendant is entitle to be allowed?
- 2) What order?

7. My answer to the above points are as under :

Point No.1 : In the Negative,

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Point No.2 : As per final Order,
for the following:

REASONS

8. **POINT NO.1** : The plaintiffs have filed this suit against the defendant for the relief of permanent injunction in respect of suit schedule property. It is the urge of the defendant that the document sought as per item No 2 & 3 were public documents and plaintiff could have obtained and produced the same, when the document was not in possession and certified copy could have obtained, first of all the application/notice itself was not in consonance with the provision and hence the order is not sustainable. On the other hand, the defendants have contended that since 18.11.2022 to this day the defendant has not questioned the order passed by this Court under Order 11 Rule 16 CPC in any court and he has not challenging the said order before the appellate authority, now the defendant come up with this false application without challenging the order, once the order

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passed by this Court, the same court cannot take back his order and the only option to the defendant is to challenge the said order before the appellate authority and present I.A., is filed to drag on the proceedings.

9. In the present I.A., the defendants prays to set aside/change/expunge the order passed by this court dated 18.11.2022. It is to be noticed that on 18.11.2022 this court has passed adverse inference from prohibiting to produce the documents sought in the notice in column No.2 and 3 in future. Now the defendant came up with this I.A., to set aside the said order. It is very significant to note that whether the said order has been properly passed or not, as a succeeding officer this court could not sit in judgment over the order passed by the predecessor and review the same. However, the defendant is at liberty to approach the proper forum to get the relief. For considering all these reasons, I answer Point No.1 in the Negative.

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10. **POINT NO.2** : In the light of the above discussion on Point No.1, I proceed the following :

ORDER

I.A.No.XI filed by the defendant/applicant under Section 151 of CPC is hereby rejected.

No order as to cost.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court, on this the day of 14th day of February 2025)

sd/-
(URMILA.V)
ADDL.CIVIL JUDGE &
J.M.F.C., TARIKERE.