

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C.,
SAKALESHAPURA**

-: PRESENT :-

Smt. Shilpa H.A, B.A.L, LL.B.,
Civil Judge & J.M.F.C.,
Sakaleshpura.

Dated : 1st day of March 2016

O.S.No.188/2013

Applicants /
Plaintiffs:-

J.M.Mahesh & another

(Rep. by Sri. B.Devaraju, Advocate.)

V/s.

Opponents /
Defendants:-

Chief Secretary & others

(D.1 to 6 Rep. by Sri.A.G.P.,
D.7 Rep. by Sri.A.M.S., and
D.8 Rep. by Sri.R.N.K., Advocate)

ORDERS ON I.A.No.10

Plaintiff has filed I.A.No.10 U/Sec.151 of Code of Civil
Procedure seeking permission to deposit the commissioner fee.

2. Plaintiff has sworn to an affidavit in support of the I.A and
contended that, he has filed the suit against the defendant for the

relief of permanent injunction restraining the defendants from forming road in the suit schedule property. Subsequently he had filed I.A under order 26 rule 9 of C.P.C for appointment of Court Commissioner to inspect the spot and submit report. The I.A was allowed and plaintiff was directed to deposit commissioner fee and filed memo of instruction. Since plaintiff is aged and suffering from ill-ness he could not appear before the Court and deposit the Commissioner fee. Hence, matter was posted for plaintiff evidence. The appointment of Court Commissioner is very important to determine the dispute between the parties. Hence, prays to condone the delay and permit the plaintiff to deposit the Commissioner fee.

3. Defendant No.7 has filed objections to the I.A No.10 and contended that on 7.7.2014 this Court has passed order by allowing the I.A for appointment of Court Commissioner. The plaintiff has not deposited the Commissioner fee for more than 7 months. Hence, the Court passed an order by mentioning that, Commissioner fee not paid. Plaintiff was regularly attending the Court. Hence, the question of not feeling well does not arise.

Plaintiff has not given proper reasons for condoning delay.
Hence, prays to dismiss the I.A with exemplary costs.

4. Heard the arguments on both sides.

5. The following points arise for my determination are: -

1) Whether the I.A. No.10 filed by the
Plaintiff U/Sec.151 of CPC deserves
to be allowed?

2) What order?

6. On hearing the arguments and on perusal of the materials
placed on record, my answer to:-

Point No. 1 :- In the Affirmative

**Point No. 2 :- As per final order,
for the following :-**

-:: REASONS ::-

7. **Point No.1**:- Plaintiff has filed the suit against the
defendants for the relief of permanent injunction restraining the
defendants from forming road in the suit schedule property. After
hearing on I.A No.3 under order 39 rule 1 and 2 Code of Civil

Procedure. The I.A was partly allowed and defendants were restrained from forming road in the suit schedule property exceeding 18 feet width. Thereafter plaintiff filed I.A under 39 rule 2A of C.P.C., for violation of T.I order. Thereafter defendants have preferred MA 3/2014 before the Senior Civil Judge Court. Subsequently I.A was filed under 26 rule 9 of C.P.C., both parties have filed the memo of instructions. Subsequently entire records was sent to Hon'ble Senior Civil Judge Court. Subsequently plaintiff did not deposit the Commissioner fee. Hence, it was taken as not paid and matter was posted for plaintiff evidence. Since appeal was pending before senior Court. The plaintiff did not appear before this Court and paid the Commissioner fee. Though the delay is not intentional but it has caused injustices to the defendants. Since appointment of Commissioner is just and necessary an opportunity shall be given to the plaintiff to deposit the Commissioner fee by imposing cost. Hence, I answer point No.1 in the **Affirmative**.

9. **Point No.2** :- In view of the aforesaid reasons, I proceed to pass the following:

ORDER

***I.A.No.10 filed by the Plaintiff U/Sec. 151
of C.P.C., is hereby allowed on cost of
Rs.200/-.***

(Dictated to the Stenographer transcribed by him, after corrections, pronounced by me in the open court on 1st day of March 2016)

(Shilpa H.A)
Civil Judge and J.M.F.C.,
Sakaleshpura.