

**ORDERS ON I.A.NO. III**

Heard the Advocate for the Plaintiff on all the I.As.

2. I.A.No.I has been filed u/O XXXIX R.1 and 2 CPC., I.A.No.II has been filed u/O XXXVIII R.5 of CPC., and I.A.No.III has been filed u/Sec. 12-A of Commercial Courts Act.

3. Before discussing with regard to the I.A.No.I and II it is necessary to pass the orders on I.A.No.III which has been filed u/Sec. 12-A of Commercial Courts Act.

4. An application has been filed to exempt the Plaintiff from comply with the Pre-institution mediation process on account of urgent exparte intern reliefs and consequently entertained about suit in the ends of justice.

5. The application is supported by the affidavit of GPA holder of the Plaintiff wherein, he contended that the suit has been filed for the specific performance of the clauses of memorandum of understanding dated 08.12.2021 and addendum of memorandum of understanding dated 25.03.2022 executed in between Plaintiff and defendant. Under the document the defendant had agreed to execute a lease deed of the scheduled property for a period of 20 years in favour of the Plaintiff upon the completion of construction of the Resort in the schedule property. Alternatively the Plaintiff has also sought for the recovery of the money invested by him towards the construction and operating the Resort in the schedule property.

6. Already two other applications have been filed u/O 39 R.1 and 2 CPC and u/O. XXXVIII R.5 of CPC for the interim orders. Since the urgent reliefs pertaining to these applications are needed, the Plaintiff has not complied the provisions of the Pre-institution mediation process prescribed under the Commercial Courts Act. Accordingly, prayed to allow the application in the ends of justice.

7. On perusal of the affidavit in the application as well as from the submissions of of the Advocate for the Plaintiff, it is very clear that if at all the Pre-institution mediation process is compelled to the Plaintiff,

definitely, the Plaintiff will be dispossessed from the suit schedule property and there is every chance of alienation, mortgaging, encumbering of the schedule property to third party. More than that, the Plaintiff has invested crores of amount to the schedule property which cannot be recovered from the side of third party if once the alienation is completed. Further Plaintiff apprehends threat of alienation or charge or encumbrance with respect to the suit schedule property by the defendant. So, in view of the above, the court is of the opinion that, if Pre-institution mediation process is compelled, definitely, the rights of the Plaintiff if any over the suit schedule property will be deprived. Accordingly, I pass the following.....

**ORDER**

I.A.No.III filed u/Sec. 12-A of Commercial Courts Act, 2015 by the plaintiff is hereby allowed.

The Plaintiff is permitted to proceed with the suit without complying the Pre-institution mediation process on account of urgent exparte interim relief.

**ORDERS ON I.A.NO. I**

I.A.No.I has been filed by the plaintiff u/O XXXIX R.1 and 2 of CPC restraining the defendants, their agents, servants, representatives, contractors, sub contractors, henchmen and all other persons claiming under them from selling, alienating, mortgaging, encumbering or creating any third party interest in the property described in the schedule in the ends of justice.

2. The application is supported by the affidavit of GPA holder of the Plaintiff, wherein he contended that, the present suit has been filed for the specific performance of clauses of memorandum of understanding dated 08.12.2021 and Addendum of memorandum of understanding dated 25.03.2022 executed between Plaintiff and defendant wherein the schedule property for a

period of 20 years in favour of the Plaintiff upon the completion of construction of a Resort in the schedule property. Alternatively, the Plaintiff also prayed for the recovery of money invested by him towards the construction and operating the Resort in the schedule property amounting to the tune of Rs.6,78,16,549/- and damages of 1,52,58,723/- along with the rate of interest at the rate of 18% p.a.

3. It was also contended that in view of the memorandum of understanding and Addendum executed in between the parties, the Plaintiff has to construct a Resort in the schedule property owned by the defendant and upon completion of construction of the Resort the defendant has to execute a lease deed in the schedule property for a period of 20 years. The Resort has been constructed in the month of June 2023 and defendant is very well aware of this fact. This Plaintiff has invested a huge amount towards the construction and for running the business in the schedule property which contained a cottage used for the homestay.

4. Despite of the completion, the defendant has not executed a lease deed in favour of the Plaintiff for the period of 20 years as mutually agreed by the parties. However, the defendants are interfering with the peaceful possession and occupation of the schedule property, therefore O.S.42/2023 has been filed, wherein the interim injunction has been granted by the court which was still in force. In the meanwhile, the defendant published a public notice on 15.03.2025 in Indian Express as well as Andolana Kannada Newspaper inviting investments and business opportunities, even though memorandum of understanding has been entered in between Plaintiff and defendant with respect to the suit schedule property. Severe attempts are made by the defendants to alienate, to create, encumber the 3<sup>rd</sup> party rights in the schedule property, even though the property is in possession of the Plaintiff. The police complaint filed before Kushalnagar Police Station become in vain, therefore, the present suit has been filed for

the necessary relief. Accordingly, prayed to allow the application in the ends of justice.

5. Upon the careful perusal of the entire records, it is very clear that a memorandum of understanding has been entered in between the parties, wherein the Plaintiff is to construct the Resort which is already completed and defendant has to execute lease deed with regard to the schedule property for 20 years. Further, it is also clear that the property is in possession of the Plaintiff, however, the defendant is making hectic attempts in order to alienate, create charge, mortgage the schedule property in favour of third party which is clear from the paper publication dated 15.03.2025.

6. From the documents placed by the Plaintiff it is evident that, the Plaintiff has invested huge amount of money to the schedule property. Therefore, the Plaintiff has made out a prima facie case, the balance of convenience is his favour and if at all the defendant alienate or create charge upon the schedule property, definitely, the Plaintiff will be deprived of his rights in the schedule property which cannot be compensated in the monetary terms. Accordingly, to restrain the defendant, or his men an interim order is to be passed till next date of hearing. Accordingly, I pass the following.....

**ORDER**

I.A.No.I filed u/O XXXIX R.1 and 2 of CPC., by the Plaintiff is hereby allowed.

Issue an ad-interim order of Temporary Injunction restraining the defendant, her agents, servants, representatives, contractors, or any person claiming through the defendant from selling, alienating mortgaging, encumbering or creating any third party rights in the schedule property till the next date of hearing.

The Plaintiff has to comply the provisions u/O XXXIX R.3 of CPC.

**Com.O.S.No. 11/2025**

Issue emergent notice on I.A.No.I to III and  
suit summons to the defendant through  
RPAD.

R/by 30.06.2025.

**SD/-XXX**

**I ADDL.DISTRICT & SESSIONS AND  
COMMERCIAL JUDGE,  
KODAGU, MADIKERI.**