

KAUK220000272021



**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC
AND ADDITIONAL MACT, ANKOLA, AT ANKOLA,
UTTARA KANNADA.**

Dated this the 26th day of May, 2026.

Presided Over by:

**Smt.Priya Ravi Joglekar, B.Com. LL.M.
Senior Civil Judge, Ankola.**

M.V.C. No.53/2021

Petitioner: Prakash Thaku Naik.

-Vs-

Respondents: 1. Gajendra Govind Gaonkar
and another.

I.A.No.VIII to X

APPLICANT: Prakash Thaku Naik

V/s

RESPONDENT: 1. Gajendra Govind Gaonkar
and another.

ORDER ON I.A.NO.VIII to X

The Petitioner has filed IA.No.VIII under Section 151
of CPC, IA No.IX under Section 18 Rules 17 of CPC and

I.A.No.X under Order XXVI Rule 9 R/w Sec.151 of CPC for appointment of Court Commissioner to visit the hospital/place of work of Doctor and record his evidence on oath with reference to the disability certificate issued to the petitioner by recalling the stage of arguments.

2. In support of the above said IAs, the petitioner has filed separate affidavits and averred that the present case is posted for arguments of the petitioner, but he intended to recall the stage from arguments to the evidence of petitioner. Because when the case is kept for evidence of petitioner he is unable to come before the court as he has sustained a pain regarding the injuries. He is unable to contact his Advocate as he is residing in a remote area. Hence, the court taken the evidence of the petitioner as nil and posted for arguments. The evidence of the Doctor is very much essential to adjudicate the matter on merits.

3. Further, the petitioner in order to substantiate the nature of the injuries and permanent disability, has produced a disability certified issued by 1) Dr. Prof.Dr.Shantaram Shetty, MS (Orth)FRCS,FACS. Tejaswini Hospital and SSIOT,ISO 90001;2008, Certified Hospital, Kadri Temple road, Mangaluru, 2) Dr. Mahabalesh Shetty, MBBS MD, MEDICO LEGAL CONSULTANT, K.M.C. Reg.No.49734 Tejaswini Hospital, SSIOT,ISO 90001-2008, Certified Hospital, Kadri Temple

road, Mangaluru The said doctors are the crucial and material witnesses for proper adjudicate of the case, particularly with regard to nature of injuries, functional disability, percentage of permanent disability, impact on earning capacity and other factors are concerned.

4. Further, the said Doctor is unable to appear before this Court due to the personal commitment/ distance/ hospital duties and repeated adjournments for securing his presence will be delay disposal of the case. Hence, seeking appointment of court commissioner for recording the evidence of Dr.Mahabalesh Shetty (MBBS, MD), Medico legal consultant, Tejasvini Hospital and SSIOT Kadri Temple road, Mangaluru who has issued the disability certificate in his favour. He sustained grievous injuries in the motor vehicle accident occurred on 19.01.2020 and he was treated at Tejasvini Hospital. The said Doctor is material and necessary witness for proving the nature of the injuries percentage of permanent disability, functional disability and its impact on his earning capacity. If the court commissioner is appointed to examine them definitely they will give evidence on this regard. The recording of evidence of the Doctor through a court commissioner would avoid unnecessary adjournments, facilitate, speedy disposal of the case, cause no prejudice to the respondents, as they will have full opportunity to cross-examine the Doctor. Hence, prays to allow the application.

5. Per contra the Respondent No.3 has filed objections to the above said applications and contended that the above said applications are contrary to law and true facts. No satisfactory grounds are made out to reopen the case at this belated stage. The application is filed is not under the proper and relevant provision of law. The application is not specific with regard to examination of which Doctor. The petitioner has not taken any steps to summon the Doctor to give evidence before this court. In the absence of the same, the petitioner cannot file an application to record the evidence of the Doctor. If the application is allowed great injustice and harm caused to the Insurance Company as the said Hospital is in Mangalore and distance between Ankola and Mangalore is more than 240 k.m. which will take four and half hours to travel. The same will be caused hardship and inconvenience to the Advocate for the respondent Insurance Company and others. On the other hand, if the witness is remain present before the court, no hardship will cause to the petitioner and all respondents. Hence, prays to dismiss the above said application.

6. Heard both sides.

7. On perusal of the entire records, the only points that would arise for my consideration are ;

1) Whether the petitioner has made out sufficient grounds to allow the applications?

2) What order?

8. My findings on the above points are as under:

Point No.1 : In the **Affirmative**.

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

REASONS

9. **Point No.1** : The petitioner has filed these applications for appointment of Court Commissioner for recording evidence of Dr.Mahabalesh Shetty (MBBS.MD) Medico legal consultant, Tejasvini Hospital and SSIOT Kadri Temple road, Mangaluru who has issued the disability certificate in his favour who has sustained grievous injuries in the motor vehicle injuries occurred on 19.01.2020. Because he is the Doctor who issued the disability certificate to the above said petitioner. In order to give details regarding the connected documents relating to the petitioner, the disability suffered by the petitioner is necessary to be proved by the evidence of the Doctor. Hence, the petitioner filed the above said applications by recalling the stage from arguments to petitioner evidence and further the above said Doctor is very busy in profession due to his busy schedule. Therefore, the

petitioner prays to appoint the Court Commissioner to record the evidence of the above said Doctor and give an opportunity to the petitioner to prove the above said petition.

10. Per contra the respondent No.3 has filed objections and contended that the above said petition is not maintainable and this application was filed by the petitioner in order to drag the proceedings of the case. Further, the application is not specific with regard to examination of which Doctor. No satisfactory grounds are made out to reopen the case at this belated stage. Hence, prays to dismiss the application.

11. On careful perusal of the records, it is burden lies on the petitioner to prove the above said petition by giving explanation relating to the injuries was sustained by the petitioner and the disability suffered by the petitioner. Then it is necessary to the petitioner to examine the above said Doctor to prove the above said facts. If the application is not allowed it will cause prejudice to the petitioner to prove the alleged details of the injuries sustained by the Petitioner, treatment given and how much disability suffered by the petitioner. Therefore, in order to prove the above said petition the evidence of Dr.Mahabalesh Shetty (MBBS.MD) Medico legal consultant, Tejasvini Hospital and SSIOT Kadri

Temple road, Mangaluru is necessary and record the evidence of the above said Doctor through the Court Commissioner, otherwise it will cause prejudice to the petitioner to prove the above said facts. Hence, it is necessary to allow the application was filed by the petitioner. Accordingly, I answer **Point No.1 in the Affirmative.**

12. **Point No.2 :** In view of reasons assigned above, I proceed to pass the following ;

ORDER

The IA No.VIII under Section 151 of CPC, IA No.IX under Section 18 Rules 17 of CPC and I.A.No.X under Order XXVI Rule 9 R/w Sec.151 of CPC by the petitioner are hereby allowed.

Sri. JTH, Advocate, Ankola Bar Association is hereby appointed as Court Commissioner.

(Directly dictated to the Stenographer, typed by her, corrected and revised by me and then pronounced in the open Court on **26th May, 2026**)

sd/-

**(Smt.Priya Ravi Joglekar)
Sr. Civil Judge and JMFC,
Ankola.**