

Civil Misc 6/2023

ORDER ON IA.No.IV

The I.A.No.4 filed by petitioner u/O 26 Rule 9 of CPC.

2. The plaintiff in the affidavit annexed to I.A No.IV contended that, the respondent highhandedly by violating the order of this court in FDP No.33/2023 dated 11.09.2023 illegally constructed building on the schedule property and CPI was directed to verify the matter and verify the application. But the CPI has filed report dated 18.06.2024, stating that, CPI has personally visited the schedule property bearing Sy.No.328/3 and verified, inquire the parties and found that, the respondent in instant petition Sri Abbasali S/o Davalsa Kanni has not constructed any building in the schedule property. Now the petitioner in the annexed to I.A.No.4 categorically contended that, the CPI without considering the direction of this court and not considering actual fact has filed false report and prayed to appoint court commissioner for ground report.

3. On perusal of the records this court observed that, in FDP No.33/2023 the court has passed in order on I.A.No.II restraining the respondent from constructing building in Sy.No.328/03 and said respondent in the instant petition and I have perused the report filed by CPI dated 18.06.2024, wherein he categorically submitted that, the respondent Abbasali has not constructed any construction on first part of Sy.No.328/3. The petitioner in the annexed to affidavit I.A.No.II categorically contended that, the building constructed by the respondent as highhandedly proving the order of this court on toss and started construction over the schedule property and if he succeeded in constructing building, the petitioner will be put to irreparable loss and substantial hardship. On the other hand, no such hardship would cause to the respondents. Hence, prayed to allow the I.As.
3. The petitioner also produced photographs with GPA location wherein it can be seen that, construction of building is going on. The respondent is placed exparte, The court has restrained respondent from constructing building in schedule property, but defendant alleged to have violated the order of this court and constructed the building in schedule

property, if the respondent continued the alleged construction that, event would lead to multiplicity of proceedings, allowing this application in no manner prejudice the right of the respondent. Hence, in order to avoid the multiplicity of proceedings and in the interest of justice, Hence, it is necessary to allow the I.A.No.4

ORDER

I.A.No.IV filed by the petitioner is hereby allowed.

The ADLR concerned is appointed as court commissioner to visit the schedule property and file detailed report.

The petitioner file memo of instruction.

Issued court commissioner warrant.

**Add.Civil Judge &JMFC,
Sindagi.**