

**IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA**

**Present: Sri. Mahesh.M., Additional Munsiff**

**Monday, the 27<sup>th</sup> day of October, 2025/ 5<sup>th</sup> Karthikam, 1947.**

**IA No. 08/2025 in O.S. No.390/2019**

(Filed on 07.10.2025)

**Petitioner/ Defendant :-**

Madhusoodana Kaimal, S/o Narayanan Namboothiri,  
Panackal House, Panavally.P.O, Panavally Muri,  
Panavally Village, Cherthala Taluk.

**By Adv. P Manoj**

**Respondent/ Plaintiff :-**

Nalpathenneswaram Devaswom, Panavally.P.O,  
Panavally Muri, Panavally Village, Cherthala Taluk,  
represented by its President.

**By Adv. N.Ratheesh**

This petition having been finally heard on 27.10.2025 and the court on the same day passed the following :-

**ORDER**

This is a petition filed by the defendant under Order XXVI Rule 11 of Code of Civil Procedure for deputing an advocate commissioner and chartered accountant to examine the accounts of plaintiff Devaswom.

**2. Petition averments in brief -**

The petitioner herein is the defendant in this case. According to the petitioner, the plaintiff has filed the above suit to realise money on the allegation that a sum of Rs.2,25,876/- is due to the plaintiff as per the documents referred to in the plaint. However, no documents referred to in the plaint were produced by the plaintiff at the time of filing the suit, except the copy of the advocate notice and reply. Therefore, the petitioner filed I.A. 1/2020 seeking a direction to the plaintiff to produce all documents relied upon against the petitioner and those

referred to in the plaint relating to the matter in question. This Court allowed the petition on 29/10/2021 and directed the plaintiff to produce the documents relied upon to support the plaint claim. Since the plaintiff did not comply with the order, the petitioner filed I.A. 1/2022 seeking dismissal of the suit for want of prosecution. The plaintiff subsequently produced the minutes book and the income and expenditure statement along with a letter from the chartered accountant. However, the day book and bank statement were not produced. These documents were submitted only after the case was included in the list and upon the application filed by the petitioner. The petitioner has stated in the written statement that the statement of account and the audit conducted by the chartered accountant are not correct. The chartered accountant was examined in this case as PW2 and has deposed before the court that he has been conducting the audit of the plaintiff Devaswom for the last 15 years. So an advocate commissioner may be appointed to examine the accounts and conduct an audit of the plaintiff with the assistance of a chartered accountant for a fair disposal of the suit. As the suit is based on accounts, the impugned audit report prepared by PW2, who has been the auditor of the plaintiff for 15 years, alone may not be relied upon. It has emerged in evidence that the auditor PW2 has not prepared the statement of accounts, receipts and payments, etc. fairly and properly. He cannot be considered impartial and is, in fact, an interested witness in favour of the plaintiff. The petitioner firmly believes that if a fair and impartial auditor prepares a statement based on the documents produced by the plaintiff, the alleged amount would not be found realisable from the petitioner. Hence this petition is filed for the appointment of an advocate commissioner with the assistance of an expert such as a chartered accountant. The petitioner undertakes to submit a panel of chartered accountants as and when directed by this Court.

**3. Respondent filed objection contending as follows-**

The petition is not maintainable either on law or on facts. The petition has been filed belatedly and is intended to deliberately prolong and complicate the proceedings by raising unjustified issues. The delay in producing the Day Book and Bank Statement before this Court was duly explained by the petitioner/defendant during the proceedings. PW2, a chartered accountant with extensive experience, has been auditing the income and expenditure accounts of the Nalpathenneswaram Temple Devaswom for several years. The income and expenditure statements for the financial years 2013–14, 2014–15, and 2015–16 were audited by him and duly verified and signed by the petitioner/defendant, who was the treasurer during those periods. These statements have also been registered with the District Registrar's Office. Although the petitioner/defendant has raised disputes regarding the accounts for the said years, clarifications have already been obtained from PW2 in this regard. The income and expenditure accounts for the period from 01-04-2016 to 30-10-2016, which form the basis of the present dispute, were audited by PW2 based on the Day Book submitted directly by the petitioner/defendant, who was the treasurer during that period. It has been alleged that the audit report does not reflect an expenditure receipt of Rs. 57,834/-. However, this amount was directly handed over by the petitioner/defendant to the Joint Committee on 30/10/2016. The audit report for that period indicates that a sum of Rs. 2,41,373/- is due to the Devaswom, and the said Rs. 57,834/- has been deducted from this amount to arrive at the final figure. The petitioner/defendant is fully aware of these facts. The accounts for the period from 01/04/2016 to 30/10/2016 have been duly audited and submitted before this Court. The petitioner/defendant has neither proved any deficiencies in those accounts nor alleged any prejudice before this Court. In light of the above circumstances, the request made in the petition to appoint an Advocate

Commissioner and a Chartered Accountant to verify the correctness of the disputed amount is not tenable. Hence this petition is liable to be dismissed.

4. Heard both sides.

5. The petitioner contends that the accounts produced by the plaintiff ought to be audited with the assistance of an Advocate Commissioner and an Auditor, to ensure the fair disposal of the present suit. The suit has been instituted by the plaintiff for the realization of money allegedly due from the defendant. In support of its claim, the plaintiff primarily relies on Ext.A4, the audit report prepared by PW2, and Ext.A5, the Day Book. It is evident from the records that both Ext.A4 and Ext.A5 were produced before this Court only at the time of the plaintiff's evidence. The defendant, from the stage of filing the written statement, has consistently maintained that Ext.A4 is not accurate. During the examination of PW2, the Auditor, the defendant conducted a detailed cross-examination challenging the veracity of Ext.A4. From the testimony of PW2, it has emerged that he has been serving as the Auditor of the plaintiff Devaswom for the past 15 years. In light of this, the apprehension raised by the defendant that Ext.A4 may have been prepared in alignment with the interests of the plaintiff cannot be dismissed outright, especially considering that such a contention has been raised from the inception of the proceedings. The defendant's plea that Ext.A4 alone should not be relied upon for adjudication of the matter is not without merit. The only substantial objection raised by the plaintiff against the present petition is that its allowance may cause delay. However, delay cannot be permitted to obstruct a party's right to produce the best possible evidence before the Court. It is true that the present application for commission has been filed during the evidence stage. However, it is pertinent to note that the documents relied upon by the plaintiff were produced only during its evidence. In such circumstances, the defendant could not have filed the

present petition at an earlier stage. Furthermore, no prejudice will be caused to the plaintiff if the petition is allowed. On the contrary, if the audit conducted by the Commissioner and Auditor corroborates Ext.A4, it would only strengthen the plaintiff's case. In view of the above, and considering that the suit pertains to monetary claims based on accounts and audit reports, and that the defendant has raised substantial doubts regarding the same, this Court is of the considered opinion that the appointment of an Advocate Commissioner along with an Auditor to verify and audit the accounts and audit reports produced before the Court is warranted. Such an exercise will aid in the proper elucidation of the matter in dispute.

**In the result, the I.A. is allowed. The petitioner is directed to produce panel of advocate commissioners who are familiar with accounts and the panel of independent licensed auditors before the next posting date.**

*(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 27<sup>th</sup> day of October, 2025.)*

Sd/-  
MAHESH.M  
ADDITIONAL MUNSIF

**APPENDIX :- NIL**

Sd/-  
ADDITIONAL MUNSIF