

IN THE COURT OF THE MUNSIF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Friday the 7th day of November, 2025/ 16th Karthika, 1947

IA No.3/2025 in O.S. No. 194/2025

Petitioner/Plaintiff:-

Robert M T, aged 58 years, S/o.Thomas, resident of Marottikkaparambil House, Perumpilly Desom, Narakkal Village, Kochi Taluk.

By Adv. O J Alfred

Respondent/Defendant :-

Jestin John, aged about 39 years, S/o.John, resident of C C1/1149, Jnaliparambu Desom, Fortkochi Village, Kochi Taluk.

By Adv. Denny Joseph

This petition come up for hearing before me on 30.10.2025 and the court on 07.11.2025 passed the following:-

ORDER

This is an application filed under Order 39 Rule 1 of Code of Civil Procedure 1908 by the petitioner seeking temporary prohibitory injunction against the respondent.

2. **Petitioner's contentions to summarize, is as follows:** The petitioner, a building contractor with over 25 years of experience, is the plaintiff in this suit filed for the realization of the balance amount due from the defendant and for the return of construction equipment

belonging to him, which the defendant has allegedly taken and used illegally. The defendant, a distant relative of the petitioner, approached him at his residence in Fort Kochi and requested him to undertake the construction of his new residential building on a work contract basis. The agreed rate was ₹500 per square foot, inclusive of charges for transporting materials from the road to the building site. The defendant represented that the distance from the road to the site was approximately 50–60 meters, and on this basis, a formal work contract agreement was executed on 14.05.2025 at the defendant's residence. However, when the petitioner visited the site on 16.05.2025, he discovered that the actual distance from the road to the site exceeded 100 meters and that the pathway was narrow and congested. On demanding additional compensation, the defendant agreed to pay extra charges. Subsequently, the defendant sent a sketch via WhatsApp showing the locations for 21 columns and requested the petitioner to proceed with the work. It was agreed that the basement construction would be paid at ₹300 per square foot over and above the earlier rate. The petitioner completed the basement work by August 2025. Unexpectedly, on 09.09.2025, the petitioner received a letter from the defendant dated 05.09.2025

falsely alleging breaches and unilaterally canceling the contract. When the petitioner visited the site, he found other workers engaged in construction using his equipment. The petitioner contends that no approved plan or engineer's supervision was provided and that all alterations were made under the defendant's instructions. The defendant's unilateral cancellation and engagement of third parties, without settling dues, are arbitrary and in violation of the contract. Hence the petition.

3. The respondent/defendant, in his counter-affidavit, categorically denies all the allegations made by the petitioner/plaintiff and contends that the petition is false, misleading, and not maintainable either in law or on facts. He submits that the petitioner has deliberately suppressed material facts to mislead the court and unjustly obtained an equitable order of injunction. The respondent states that a *labour contract agreement* was executed on 14.05.2025, under which the petitioner undertook to construct the ground floor of his residential building situated in 4.380 cents of land in Sy. Nos. 1050/3-7 and 1050/3-8 of Fort Kochi Village, in accordance with the approved building permit No. SCP/631/2025. The agreed labour charge was ₹500 per sq. ft., inclusive of the cost of carrying building

materials from the main road to the site. The respondent denies the petitioner's claim that he misrepresented the distance from the road to the site as 50–60 meters, asserting that the petitioner inspected the property, verified the plan, and understood the actual site conditions before entering into the agreement. The respondent further alleges that the petitioner began construction in a rash and negligent manner, disobeying the directions of the supervising engineer and deviating from the approved plan. These deviations, he claims, weakened the foundation and caused structural defects, compelling him to undertake remedial work at an additional cost of ₹20,000. The engineer even reported that the foundation might settle due to the petitioner's poor workmanship.

4. Because of these defaults, the respondent canceled the contract through a letter dated 05.09.2025 and demanded compensation of ₹1,00,000 for the losses sustained. The petitioner acknowledged receipt of the letter on 09.09.2025 and removed his equipment from the site. Subsequently, the respondent engaged a new contractor on 11.09.2025, who completed the brick and lintel work. The respondent asserts that neither he nor the new contractor used any of the petitioner's tools. He emphasizes that the ongoing construction is

financed by a bank loan and intended for his family's residence; hence, halting the work through an injunction would cause irreparable loss, financial hardship and material wastage. The balance of convenience, therefore, lies entirely in his favor. Hence the petition may be dismissed with costs.

5. Points arise for consideration

- (i) Whether the petitioner has made out a prima facie case?
- (ii) Whether the balance of convenience is in favour of the petitioner?
- (iii) Whether the petitioner will suffer irreparable injury, if the temporary injunction is not granted?
- (iv) Whether the petitioner is entitled for a temporary prohibitory injunction as prayed for?
- (v) Reliefs and costs?

6. Heard both sides.

7 . Point Nos.i to v: The specific case of the petitioner is that he is a building contractor with 25 years of experience. The defendant, a relative, entrusted him with the construction of a residential building on a work contract basis at a rate of ₹500 per sq. ft., including the cost of carrying materials from the road to the site. It is alleged that the defendant represented that the distance from

the road to the site was only 50–60 meters, but it was later found to be more than 100 meters with a narrow pathway. The defendant agreed to pay extra charges for the transportation of materials and for certain additional works such as excavation and erection of columns at ₹300 per sq. ft. over and above the agreed rate. The petitioner states that he completed the basement work by August 2025, but suddenly received a letter dated 05.09.2025 from the defendant canceling the agreement and making false allegations. The petitioner further states that the defendant, without settling the petitioner's dues, unlawfully engaged another contractor and continued the construction using the petitioner's equipment stored at the site. But at the same time the respondent contended that the petitioner executed the foundation work in a negligent and defective manner, deviating from the approved plan, thereby causing loss of strength to the foundation. The engineer had advised remedial measures, incurring additional expenditure. Consequently, the respondent cancelled the agreement on 05.09.2025 and engaged another contractor to continue the work.

8. This court considered the rival submissions made by the parties. Admittedly, a construction agreement existed between the

parties and that the same has been cancelled by the respondent/defendant. The dispute primarily relates to alleged non-payment and unlawful termination. However, the property in question belongs to the defendant, and the construction is of his residential building. The petitioner has not produced any convincing material to show that his equipment is still at the site or that the defendant is using the same.

9. The petitioner's right, if any, appears to be limited to monetary claims under the contract, which can be adjudicated in the suit. No proprietary or possessory right over the construction site is shown. Hence, the Court is not satisfied that a prima facie case is made out for restraining the defendant from continuing his own construction. The construction of the respondent's residential building is stated to have reached the lintel level. The respondent has availed a bank loan and is residing in a rented house. Granting of injunction would result in stoppage of work, financial loss, and deterioration of materials already at the site. On the other hand, the petitioner's claim is monetary in nature, for which he can be compensated if he succeeds in the suit. Hence, the balance of convenience is also not in favour of the Petitioner. The alleged injury to the petitioner is in the nature of

non-payment of dues and wrongful use of equipment, both of which are compensable in terms of money. The respondent, on the contrary, will suffer irreparable loss if construction is stopped at this stage. Hence, the petitioner did not suffer any irreparable injury. In such circumstances this court is of the view that the petitioner has failed to establish the three essential ingredients required under Order 39 Rules 1 and 2 CPC. Therefore, the petitioner is not entitled to the relief sought.

In the result, the petition is dismissed without costs.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 7th day of November 2025)

Sd/-
Simi P Siju
Additional Munsiff

APPENDIX : Nil

Id/-
Additional Munsiff

//True Copy//

Additional Munsiff

ORDER
I.A. No.3/2025 in
O.S. No.194/2025
Dated : 07.11.2025