

**ORDER BELOW EXH.1**  
(Passed on 23/03/2026)

This application is filed by the applicant as per Order 39 Rule 2(A) of Civil Procedure Code. Non-applicant filed say below Exh.8.

2. Heard Adv. Shri. Gajwe for the applicant and Adv. Shri. Bhimte for the non-applicant. Perused application, say and the evidence filed on record.

**Brief facts of the case as under :-**

3. Applicant filed this application with the contention that he has filed RCS No.40/2016 for injunction against the present non-applicant. He came with the case that the present non-applicant constructed building on the Nazul land without permission of the Kamptee Municipal Council. He has blocked the road of the applicant as well as other persons of the vicinity. He further came with the case that, he has filed the application for temporary injunction below Exh.5 in RCS No.40/2016 which is came to be allowed and non-applicant were directed not to construct the building over 3 ft. lane in between the house of applicant and non-applicant. Even after passing this order, non-applicant constructed the house by disobeying the order of the court and breached the injunction order. Therefore, this application is filed for taking the action against the non-applicant as per Order 39 Rule 2(A) of CPC.

4. The non-applicant filed say below Exh.8 and came with the case that they have not breached the order of the court. The application is

false. The applicant has not come in the court with clean hands. He has not constructed the building over the 3 ft. lane nor breached the order of the injunction and prayed for dismissal of the application.

**EVIDENCE :-**

5. The applicant examined himself below Exh.17. Thereafter, he examined witness Tarachand Belekar below Exh.33 and filed pursis below Exh.44. Non-applicant examined himself below Exh.46. He filed pursis below Exh. 52 and closed his evidence.

**POINTS :-**

6. Considering the application, say, evidence and arguments of both the parties, following points are arises for my consideration. Those are mentioned as follows with reasons -

| <b>Sr. No.</b> | <b>Points</b>   | <b>Answer</b>      |
|----------------|---|--------------------|
| 1              | Whether applicant proves that non-applicant constructed the building even after having prohibitory order against him as per Order below Exh.5 in RCS No.40/2016 ? | No                 |
| 2              | Whether applicant proves that non-applicant disobeys the order of the court passed below Exh.5 in RCS No.40/2016 ?  | No                 |
| 3              | What Order ?  | As per final order |

**:- REASONING :-**

**AS TO POINT NO.1 AND 2 :-**

7. As point no.1 and 2 are related with each other, they both are discussed together as follows.

8. The applicant in his evidence reiterated the contents of the application and prayed for action against non-applicant as he disobeyed and breached the injunction order passed by Civil Judge Junior Division Kamptee in RCS No.40/2016 below Exh.5. He examined himself and his witness Tarachand below Exh.33 who is Photographer. This witness deposed that he has clicked the photographs filed below Exh.35 to 42 and he has admitted the contents of Certificate Exh.43.

9. I have carefully perused the order passed by my Learned Predecessor below Exh.5 in RCS No.40/2016. The order passed below Exh.5 in RCS No.40/2016 is as follows -

“(1) The application is allowed.

(2) Defendants are hereby temporarily restrained from carrying out construction over 3 feet Lane in between house of the plaintiff and them till the decision of the suit.”

10. As per this order, defendants are restrained from constructing over 3 ft. lane between plaintiff and defendants. The photographs filed by plaintiff i.e. applicant below Exh.36 to 41 shows that there is drainage lane in between the house of applicant and non-applicant and it is admitted fact.

11. In the evidence filed by the applicant, it is nowhere brought on record that after passing the order below Exh.5, non-applicant constructed the building over the lane in between the house of applicant and non-applicant. The photographs filed along with Exh.38 specifically shows that the lane i.e. drainage line and some open space. No doubt, measurement of the open space and the RCC Drainage is nowhere mentioned by the applicant in his application. But its existency is

admitted by applicant. The land having bicycle standing in photograph Exh.38 is of the applicant and the new construction seen in the photograph is of the non-applicant. The drainage line is specifically seen in Exh.38.

12. On the contrary, while passing order below Exh.5, my learned Predecessor in Para No.11 specifically mentioned that, “perusal of the said copy clearly shows that there is lane in between the house of plaintiff and non-applicant near the drainage line.” Further after perusing photograph Exh.36 and 38, it seems that there is no construction over the drainage line. On the contrary, the non-applicant filed the photographs below Exh.16/1 which shows that the present applicant have constructed one room near the drainage line which shows that he has occupied the open space also till the drainage line. But in the present case, there is no evidence on record to show that after passing of the order below Exh.5, non-applicant constructed on the drainage line situated in between the house of applicant and non-applicant. On the contrary, the record shows that applicant himself constructed in between his house and drainage line after clicking photographs filed below Exh.38.

13. On the contrary, during the cross-examination of the non-applicant by applicant below Exh.46, it is asked by advocate for the applicant to the non-applicant that there is drainage line in between the house of applicant and non-applicant having measurement of 3 to 3.5 ft. This shows that the lane is in existence and no construction have been made by the applicant over that lane. In such circumstances, the evidence adduced by the applicant does not prove any fact that the non-applicant disobeyed the order passed by Civil Judge Junior Division in RCS

No.40/2016 passed below Exh.5 and in breach of that order, he has constructed the building over the 3 ft. lane situated between the house of applicant and non-applicant. As applicant failed to prove the fact of construction and dis-obeyance of the order by the non-applicant passed below Exh.5 in RCS No.40/2016, there is no evidence to show the breach of the order. Hence, I answer the point no.1 and 2 in negative and in answer to point no.3, I pass following order.

**- ORDER -**

- 1] The application is rejected.
- 2] No order as to cost.

Kamptee  
Date : 23/03/2026.

**(Mohan R. Kamat)**  
Civil Judge, Junior Division,  
Kamptee.

**CERTIFICATE**

I affirm that, the contents of this PDF file of order are same word to word, as per the original order.

|   |   |
|---|---|
| Court                                       | (M. R. Kamat)<br>CJJD and JMFC, Court No.1, Kamptee |
| Name of Stenographer                        | Payal G. Andraskar (Gr-III)                         |
| Date  | 23.03.2026  |
| Order signed by the<br>Presiding Officer on | 23.03.2026  |
| Order uploaded on                           | 23.03.2026  |