

**ORDER BELOW EXH 107**

The present application is filed by the defendants praying that the Court Commissioner, who was appointed earlier pursuant to the order below Exh. 100, be again directed to execute the commission for measurement of Gat No. 1035, as the earlier commission could not be executed. The defendants have specifically stated that they are ready and willing to deposit the requisite commission fees as directed in the earlier order.

2. The record of the case reveals that an application for appointment of Court Commissioner was earlier filed at Exh. 100 under the provisions of Order XXVI Rule 9 of the Code of Civil Procedure, 1908, which came to be allowed by my learned predecessor by order dated 05/12/2023. By the said order, the Deputy Superintendent of Land Records, Kankavli was appointed as Court Commissioner for carrying out measurement of Gat No. 1035 and for submitting a report along with map and details of construction, if any. It was specifically directed under Clause 5 of the operative order that the entire cost of measurement shall be borne by the defendants and that the measurement fees shall be deposited by them directly with the concerned office.

3. It further appears from the record that the Court Commissioner submitted a report at Exh. 103 stating that the commission could not be executed due to non-deposit of the commission fees as directed under the order below Exh. 100. The say of the Court Commissioner also clarifies that in absence of compliance of the said direction, the commission could not be carried out.

4. The present application at Exh. 107 is thus filed in continuation of the earlier order below Exh. 100, seeking execution of the

very same commission, with an express statement on behalf of the defendants that they are now ready to deposit the commission fees.

5. The plaintiff has opposed the application by filing say and has contended that the application is false and is liable to be rejected. However, no substantive legal ground has been demonstrated to show as to why the commission, which is already ordered by the Court and has not been executed for procedural non-compliance, should not now be executed upon compliance of the said condition.

6. At this stage, it is necessary to consider the legal position governing issuance of commission under Order XXVI Rule 9 of the Code of Civil Procedure, 1908. The said provision empowers the Court to issue a commission for local investigation in order to elucidate any matter in dispute and to enable the Court to arrive at a just and proper conclusion. When the Court has already exercised such discretion and passed a reasoned order appointing a Court Commissioner, and the said order has attained finality, the logical consequence is that the commission must be executed in terms of that order, subject to compliance of the conditions imposed therein.

7. In the present case, the earlier order below Exh. 100 has neither been challenged nor modified. The only impediment in execution of the commission was non-deposit of fees by the defendants. Now, the defendants have expressed their readiness to comply with the said condition. Therefore, the obstacle which prevented execution of the commission no longer survives.

8. It is further well settled that procedural directions issued by the Court are intended to advance the cause of justice and not to defeat it. When a commission has been found necessary for proper adjudication of the dispute, denial of its execution merely on account of earlier non-

compliance, despite subsequent readiness to comply, would result in miscarriage of justice and would defeat the very purpose of issuing the commission.

9. The objection raised by the plaintiff that the application is false does not carry much substance in view of the fact that the commission is already ordered and the present application is only for its execution. No prejudice is shown to be caused to the plaintiff if the commission is executed in accordance with law after due notice to both parties.

10. In view of the above discussion, this Court is of the considered opinion that the application deserves to be allowed, subject to strict compliance of the condition regarding deposit of commission fees as directed in the order below Exh. 100. Hence, the order.

### **ORDER**

1. The application at Exh. 107 is allowed.
2. The defendants shall deposit the commission fees, as directed under Clause 5 of the order below Exh. 100, within a period of 15 days from the date of this order.
3. Upon such deposit, the Court Commissioner i.e. Deputy Superintendent of Land Records, Kankavli, shall proceed to execute the commission in terms of the order below Exh. 100 and submit report within 60 days.
4. The Court Commissioner shall issue prior notice to both parties and carry out the commission in accordance with law.

Kankavli  
Date: 24/04/2026

**(Shubham G. Laturiya)**  
Civil Judge J.D., Kankavli  
JO Code: - MH03297