

IN THE COURT OF SUBORDINATE JUDGE, ERANIEL.
Present : Tmt. D. Asha Kousalya Shanthini, B.Sc., B.L.,
Subordinate Judge, Eraniel.

Monday, the 5th day of January 2026

I.A.No.3/2025
in
C.O.S.No.1/2015

Mr.A.Vincent George

... Petitioner/Plaintiff

.Vs.

Mrs.N.Amutha Kumari

... Respondent/Defendant

This petition coming up for final hearing before me on 19.12.2025 and the petitioner and respondent husband are present though Mrs. V.Sathiya Advocate is on record for petitioner and Thiru. J.John Jayakumar, Advocate is on record for respondent and argument notes are filed by both the petitioner and respondent and having stood over for my consideration till this day, this court delivers the following:

ORDER

1. The petitioner/plaintiff seeks for appointment of an advocate commissioner to note down the physical features including the existing super structure in the suit property, to note down the actual construction work completed by the petitioner/plaintiff including ascertaining the actual value of cost of construction done in residential building structure in the suit property with the aid of qualified valuer and filed a detailed report with photographs under order 21 rule 9 and 10 of Civil Procedure Code.

2. The written statement filed by the defendant is adopted as the counter of the respondent in the present I.A. and written arguments notes are filed by both the petitioner and respondent.

3. In the present commercial suit, the petitioner who appears to be a residential building contractor seeks for the recovery of Rs.16,84,129.44, from the defendant

with whom he entered into an agreement dated 08.02.2019, for construction of a residential building to the extent of 2741 square feet at the rate of Rs.1,550/- per square feet, the total cost estimated at Rs. 42,48,550/- initially. The petitioner also pleads about a renewal agreement dated 18.03.2022, in which the total area of building constructed was re-fixed as Rs. 4,296.95 square feet, the price of construction cost fixed as Rs.1,525/- per square feet and the total construction cost was Rs.69,52,848.75. Out of this amount Rs. 39,30,000/- paid by the respondent/defendant is admitted by both the sides

4. The petitioner's specific grievance is that the construction work cost was Rs. 53,71,187/- out of which the respondent paid only Rs.39,30,000/- and hence the balance amount payable by the respondent is Rs.14,41,187/-. Out of the total suit claim of Rs.16,84,129.44, the said sum of Rs. 14,41,187/- is shown as the principal amount due, the interest is Rs. 1,72,942.44 and towards damages Rs. 70,000/- is added by the petitioner. Though the petitioner pleads that the suit claimed amount is towards the work completed by him as per the agreement he is also pleading that for the construction of the 2nd floor he has spent Rs. 13,10,000/- from his pocket on credit. The main contention pleaded and argued by the respondent is that no such credit of Rs. 13,10,000 was given by the petitioner, who has come up with the present suit, seeking for Rs. 14,41,187/- with interest and damages. When the respondent has taken a specific defence like this based on the renewed agreement dated 18.03.2022, it is for the petitioner to prove his version about the said credit transaction of Rs. 13,10,000/-, who is now seeking for the assistance of an advocate commissioner to note down the construction work completed by him and to ascertain the actual value of cost of construction done in the said residential building.

5. When the respondent/ defendant specifically pleads that as per the renewed agreement dated 18.03.2022, the 1st stage itself was not properly completed and the petitioner also fairly admits by pleading about he doing the 2nd, 3rd and 6th stages in

part, his specific pleading about his evidence of photographs taken (para 17) is to be taken into account.

6. The petitioner himself pleaded that regarding the work completed in the 2nd, 3rd and 6th stage, as per the renewed agreement dated 18.03.2022, photos were taken and they were ejected from the construction site forcefully by the respondent, who locked the house on 23.06.2023, which means that the petitioner and his men have not worked in the plaint schedule house after that. In the list of documents filed by the petitioner along with the plaint, he has filed photographs (12 nos.) dated 06.09.2024 for reference. While so, why the petitioner seeks for further photographs is not convincingly explained by the petitioner in the present I.A.

7. On the other hand, the respondent categorically pleads and argues that as the petitioner contractor failed to complete the first stage of work, notice was sent to him to rescind the contract on 14.08.2024 and the petitioner failed to complete the work properly who deliberately refused to complete the work, she approached some other contractor to complete the work as she was waiting since 2019, the petitioner obstructed her to construct the building with other contractors and labourers, quarreled with them, she informed the police on 05.10.2024 and on 04.10.2024 she filed a suit for permanent injunction against the petitioner in O.S. No. 77/2024, to restrain any trespass into the plaint schedule property and from causing any obstructions against her in I.A. No. 2/2024 in the said suit which was allowed on 12.12.2025. The respondent has also specifically pleaded that she arranged for some other contractor and completed the work and started to reside in her own building.

8. In the written argument notes filed by the respondent, she has annexed the photographs which were taken until the construction done by the petitioner and the photographs which were taken after completing the work with other workers. Though sufficient time and opportunities were given, the petitioner filed no objections for the photographs, by way of any reply who offered no explanation for the respondent's arguments regarding the work completed later by some other contractor. In fact, in

the written argument notes, the petitioner admits that the remaining work was continued by the respondent on 05.10.2024 itself.

9. In such circumstances, the petitioner seeking for the assistance of the advocate commissioner on 21.01.2025, after the completion of the entire building construction appears to be of no merits. Hence, the petitioner seeking for the assistance of the Court Commissioner to note down the physical features of the said residential building and seeking for the assistance for the qualified valuer for ascertain the actual value of his cost of construction, appears to be merit-less at this stage which will only drag on the matter, where, in commercial suits expeditious disposal is the main criterion .

Considering the facts and circumstances of the present case, for the above said reasons, this court is not inclined to allow the present I.A. as prayed for.

In the result, the I.A. is dismissed. No cost.

Pronounced by me in open court on this the 5th day of January, 2026.

Sd/-
Subordinate Judge,
Eraniel.