

KABC170012282021



**IN THE COURT OF LXXXIV ADDL. CITY CIVIL AND SESSIONS JUDGE  
(CCH-85) (COMMERCIAL COURT), BENGALURU**

**DATED THIS THE 30<sup>th</sup> DAY OF JANUARY 2025**

**PRESENT**

**SRI.RAMAKANT CHAVAN,**

**B.Com., LL.B.(Spl)**

**LXXXIV ADDL. CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.**

**ORDERS ON I.A.No.XVIII  
IN  
Com.O.S.No.25855/2017**

**PLAINTIFFS:**

M/s Gaurav Rose Real Estate Pvt. Ltd.  
A Company incorporated under the  
Companies Act, 1956  
Having its registered office at  
9/12, Lal Bazar Street,  
Merchantile Building,  
Block-E, 2<sup>nd</sup> floor, Kolkata-001.  
Rep. by its Authorized Signatory  
RohanAgarwal

**(By M/s AKS Law Associates)**

**AND**

**DEFENDANTS:**

1. M/s Blue Horison Hotels Pvt. Ltd.  
A company incorporated under the

Companies Act, 1956,  
Having registered office at:  
No:172/1, Srinivas Industrial Estate,  
N.S.Palya,  
Bannerghatta Road,  
Bengaluru-560076  
Rep. by its Directors  
A.C.SrinivasRaju and  
A.M.Ramaraju

**and Others**

### **ORDERS ON IA No.XVIII**

This application is filed U/Or VII Rule 11(a) & (d) of CPC for rejection of the plaint for want of cause of action and barred by limitation.

Along with the application, the Director of the defendant No.1 has filed his affidavit stating that the suit is filed for recovery of money alleged paid in the year 2012. The suit was filed in the year 2017. It is barred by limitation. The whole suit is based on undated, unsigned and unregistered Mortgage Deed as referred in the plaint. The claim has been time barred, all the other statements such as existence of Mortgage are made only to overcome the question of limitation, hence, the suit is liable to be dismissed.

It is further stated that, the Mortgage Deed is not a registered document and it is not attested by Two witnesses, it cannot be looked into as per the provisions of Sec.17 of the

Registration Act and Sec.59 of the T.P. Act. If there is no mortgage, it is only a simple suit for money and the suit should have been filed within Three years. The money was paid on 22.05.2012, 24.05.2012 and 25.05.2012 as pleaded in the plaint. There has been no payment forthcoming from the date of money was given, the date of Company Petition or the present suit. The plaintiff has also filed Company Winding Up Petition in COP No.161/2016 with respect to the claim as made in this suit. Subsequent to the Company Petition and the above suit, the entire principal amount of Rs.5.00 Crores and in addition Rs.94.00 lakhs which was payable in respect of another sister company of the plaintiff and the plaintiff has already been paid. Also pointed out towards the provisions of Article 18 and 19 of the Limitation Act mandates that, the acknowledgment of debt on a day subsequent to expiry of period of limitation would renew the limitation. The law mandates that, with or without the defence of the limitation, the court has to decide by itself to answer whether the claim is barred by limitation or otherwise, Sec.3 of the Limitation Act. If the application is not allowed, much hardship will be caused to the defendants. No hardship will cause to the other side if the application is allowed. Hence, prays for allowing the application.

The other side has filed detailed objections to this application, denying most of the contents of the application and stated that the application is not maintainable. The suit has been filed for recovery of money in pursuance of the loan being

given in 2012 and thereafter, on the Mortgage Deed dated 04.04.2014. Even in the reply dated 30.01.2016 there is an admission that, the said sums have been paid in 2012 by the plaintiff and that the same has been acknowledged. In view of the same, the suit filed in the year 2017, it is not a time barred one as contended by the other side. In view of the subsequent payments made in the year 2020 and thereon, there has been a continuous acknowledgment of debt and liability and therefore, the averment that, the present suit is barred by limitation is untenable. The mortgage deed is admissible or otherwise, as contended by the other side, it is a matter to be decided on the merits of the case and the plaint cannot be dismissed on the adjudication of an admissibility of a document or otherwise either on the ground of registration or stamping.

It is further stated and drawn the attention towards the orders passed by the Hon'ble High Court of Karnataka in MFA No.4806/2018 dated 23.11.2024. The Hon'ble High Court of Karnataka held that, all these matters are liable to be considered at the merits and therefore, on this ground alone, the instant application is neither maintainable in law or on the facts of the case. Hence, on these grounds and other grounds prays for rejection of the application.

The learned counsel for the defendant No.1 has filed written arguments. He has pointed out towards the pleadings of the parties and plaint averments particularly at para No.5. The amounts allegedly paid in the month of May 2012, but, the suit

is filed in the year 2017. Hence, the suit is barred by limitation. He has also pointed out towards the Sec.18 and 19 of the Limitation Act. The suit of the plaintiff is based on undated, unsigned, unattested and unregistered Mortgage Deed. He has also pointed out towards the provisions of Sec.17 of the Registration Act of the and Sec.59 of the T.P.Act. He has also drawn my attention towards Sec.68 of the Evidence Act. The mortgage would have been proved only by examining an attesting witness. It is impossible today. The plaintiff had instituted Company Petition in COP No.161/2016 before the Hon'ble High Court of Karnataka with respect of the claim as made in this suit. Subsequent to the COP and the suit, the entire principal amount of Rs.5.00 Crores and Rs.94.00 lakhs which was payable in respect of the another sister company of the plaintiff has already been paid. The said debt is acknowledged. The payments are made subsequent to expiration, therefore, that is not an AOD. There are grounds to allow the application and reject the plaint, since there is no cause of action and barred by limitation.

During his arguments, he has relied upon the decisions reported in AIR 1977 SC 2421, AIR 2014 SC 339, AIR 1965 SC 1591, ILR 1990 KAR 3518 and Civil Appeal No.6144/2024.

Per contra, the learned counsel for the plaintiff also submitted his arguments basing on the plaint averments as well as statement of objections. The suit is filed in the year 2017. He has pointed out towards the reply given by the other side on

30.01.2016. There is an admission that, the said sums have been paid in 2012 by the plaintiff and that the same has been acknowledged. Hence, the suit is not barred by limitation as contended by the other side. He has pointed out towards the Ex.P3, P4, P8, P10, P14 and other materials on record. Ex.P14 is the said reply dated 30.01.2016 and the Ex.P4 is the cheques dated 22, 24, 25 of May 2012 and Ex.P8 is the notice issued by the plaintiff on 18.12.2015. He has also pointed out towards Sec.49 of the Registration Act. Rs.5.00 Crores has been paid and it is an admitted fact. He has also pointed out towards the plaint averments and regarding cause of action, it is clearly mentioned at para No.27.

During his arguments, he has relied upon the decisions reported in 2025 SCC Online SC 48 in Indian Evangelical Lutheran Church Trust Association Vs Sri.Bala & Company, (2021) 17 SCC 100 in Salim D. Agboatwala and Ors. Vs Shamji Oddhavji Takkar & Ors. and (2021) 8 SCC 481 in Lakshmi Path Surana Vs Union Bank of India & Ors.

After going through the written arguments filed on behalf of the defendant No.1 and after hearing the other side, I have perused the pleadings of the parties. The suit is filed for recovery of amount with interest at the rate of 24% p.a. Admittedly, the amounts have been paid in the month of May 2012. The suit is filed in the year 2017. Exactly Nine years ago i.e. on 30.01.2016, the reply has been given by the defendant No.1 regarding payments and acknowledged the payments to

the notice issued on behalf of the plaintiff as per Ex.P8 on 18.12.2015. COP was also filed and the say of the defendant No.1 is that, subsequent to the COP and this suit, an amount of Rs.5.00 lakhs has been paid to the plaintiff. There is no dispute in this regard. Now, the remaining fact is regarding interest on the said amount.

The defendant No.1 has filed its written statement. Issues have been framed. Evidence of PW1 has been recorded and some documents have been marked. I have also gone through the plaint averments, it is clearly pleaded in para No.27 of the plaint. I have also gone through the provisions of Sec.17 of the Registration Act and Sec.18 and 19 of the Limitation Act as well as Sec.49 of the Registration Act also. The main contention by the defendant No.1 who is the contesting party that, the suit is barred by law of limitation and there is no cause of action. Regarding cause of action it is clearly pleaded in the plaint. In regard to the point of limitation is concerned, it is matter of trial and moreover, the payments have been admitted by the defendant No.1, there is clear acknowledgment. Moreover, the defendant No.1 has already paid the principal amount of Rs.5.00 Crores. Now, the question remains regarding interest. Both the parties had approached the Hon'ble High Court of Karnataka and subsequently an application is filed on behalf of the plaintiff U/Or XXXVIII Rule 5 of CPC and that application is also pending for disposal, after hearing both sides.

I have also gone through the decisions relied upon by the learned counsel for the defendant No.1. The principles laid down in these decisions are well founded. I have also gone through the decisions relied upon by the other side referred above. The principles laid down in these decisions are well founded. Since, there are admissions regarding payments by the plaintiff and it has to be ascertained only to a full dressed trial. In regard to Mortgage Deed is concerned, it is an unregistered document and the question of marking and relying upon the same, it has not arise at present, since there is an acknowledgment as well as repayment of the principal amount. The parties are disputing regarding rate of interest to be paid. The decisions relied upon by the learned counsel for the plaintiff come to the aid of the case of the plaintiff at present. Therefore, in the light of discussions made supra, I made the following:

**ORDER**

**The application filed by the defendant No.1 U/Or.VII Rule 11 (a) & (d) of CPC as IA No.18 is hereby rejected.**

(Dictated to the Stenographer typed by her directly on the computer, corrected and then pronounced by me in the open court on this the **30<sup>th</sup>** day of **January 2025**)

**(RAMAKANT CHAVAN)**  
**LXXXIV Addl. City Civil & Sessions Judge,**  
**(CCH-85) Commercial Court, Bengaluru.**