

KABC170012282021



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

DATED THIS THE 30th 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.19

IN

Com.O.S.No.25855/2017

PLAINTIFF:

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, 2nd 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.19

This application is filed U/Or 38 Rule 5 of CPC for attach the property mentioned in the application for a sum of Rs.67,83,63,777/- or in the alternate, direct the defendant No.1 to deposit sum of Rs.67,83,63,777/-, in view of the urgency, grant for an ad-interim order of temporary injunction.

Along with the application, the authorized representative of the plaintiff has filed his affidavit stating that this court while disposing IA No.1 stated that, in the event the defendant is selling the property mentioned in the schedule would require security for the same to be deposited before the court. The Hon'ble High Court of Karnataka in MFA No.4806/2018 has passed an order on 23.11.2024 and observed for filing this application. It is evident that, the defendant has not only admitted the loan transaction, but, also not disputed the signaute on the document i.e. Mortgage Deed dated 04.04.2014 – Ex.P3.

It is further stated that, the defendant No.1 is intending to sell the property mentioned in the schedule and produced the documents i.e. News article dated 24.10.2024, 21.10.2024, 20.10.2024, 21.10.2024 in Economic Times, Hindustan Times and other News papers. The defendant No.1 has approached the Hon'ble High Court of Karnataka in WP No.22247/2024 and WP No.17586/2024, claiming financial distress itself shows that, the defendant No.1 may not be able to meet the debt which is due to the plaintiff as and when the judgment and decree which may be passed. The defendant No.1 as per the financial records, has no other asset than the property mentioned in the schedule of the application. It is learnt that, the Item No.2 of the schedule property has been sold by defendant No.1 pending adjudication and without the permission of the court.

It is further stated that, as per the CA Certificate as on 12.11.2024, and as per the Agreement between the parties, the sum due from the defendant No.1 is Rs.67,83,63,777/- and interest at the rate of 24% p.a. compounded annually. He has made out a prima facie case and balance of convenience lies in favour of the plaintiff. Hence, prays for allowing the application.

The defendant No.1 has filed detailed objections to this application, denying most of the contents of the application and stated that the plaintiff has suppressed the material facts before the court and not approached the court with

clean hands. The plaintiff had filed IA No.3 U/Or 38 Rule 5 of CPC seeking the similar relief as sought in the instant application. Objections were filed by the defendant No.1. This fact is also suppressed by the plaintiff. The present application is not maintainable.

It is further stated that, the plaintiff had instituted Company Petition in COP No.161/2016 before the Hon'ble High Court of Karnataka with respect to the claim as made in the suit. Subsequent to the said petition, the entire principle amount of Rs.5.00 Crores and in addition Rs.94.00 lakhs which was payable in respect of another sister concern of the plaintiff has already been paid. The application is not in conformity with the provisions of Order 39 Rule 5 of CPC. The plaintiff has already selected its remedy and consequently there cannot be simultaneous proceedings.

It is further stated that Order 38 Rule 8(5) of CPC mandates that, value of the property sought to be attached is to be furnished. With ulterior motive, the value of the property is not stated in the application. Hence, the application is not maintainable. The suit filed by the plaintiff is for recovery of money allegedly paid in the year 2012, the suit is filed in the year 2017. It is barred by limitation. The suit is based on an undated, unsigned, unattested and unregistered Mortgage Deed. It is also pleaded in the plaint. The Ex.P3 is not a registered document and as such cannot be looked into as per the provisions of Sec.17 of the

Registration Act. The document is not attested by Two witnesses. Hence, it cannot be looked into, in view of the provisions of Sec.59 of TP Act.

It is further stated that, the defendant No.1 has filed an application for rejection of plaint U/Or VII Rule 11(a) and (d) of CPC and the same is pending for consideration. The claim of the plaintiff is that, there was a Mortgage although same is denied by the defendant No.1. It is stated that, the defendant No.4 is the owner, but, the Mortgage Deed does not show the 4th defendant is to be a party. There cannot an order of attachment because the requirements of Order 38 Rule 5 of CPC are not satisfied. The property is mortgaged to Vistra ITCL (India) Ltd. with respect to debentures that had been issued. Vistra ITLC (India) Ltd. initiated proceedings under the Securitization Act. Those proceedings were challenged in WP No.17586/2024. There a compromise was arrived at and joint memo was filed. The parties who reported settlement, time extensions were agreed for the reason that e-Khata was necessary for registration. The entire amount that was payable in terms of settlement in WP No.22247/2024 c/w WP No.15586/2024 has been kept ready by way of DD by the purchaser. Against the claim of Rs.835 Crores a settlement is arrived at around Rs.600 Crores and if the prayer is granted this defendant No.1 would loose this benefit and he would not be able to comply the commitment made in the joint memo before the Hon'ble High Court of

Karnataka. Hence, on these grounds, pray for rejection of the application.

The defendant No.5 also filed separate objections to this application, it has also denied the contents of the application and affidavit. The application is not maintainable. The suit is filed for recovery of the amount from the defendant Nos.1 to 4. No allegations are made against defendant No.5. The role of this defendant is very limited. The case of the plaintiff is that, the defendant No.1 has borrowed a sum of Rs.5.00 Crores from the plaintiff in relation to the same have executed a Mortgage Deed dated 04.04.2014. The defendant Nos.1 to 4 have already filed their written statement and disputed the execution of Mortgage Deed. IA No.1 was filed by the plaintiff U/Or 39 Rule 1 and 2 of CPC and it came to be dismissed from 28.04.2018. Now the entire dispute is between the defendant No.1 and the plaintiff regarding alleged Mortgage Deed. The defendant No.5 is not liable for the actions of the defendant Nos.1 to 4 and no action can lie against defendant No.5. No liability for breach of Agreement against the defendant No.5. There are no reasons to file this application. Hence, on these grounds and other grounds prays for rejection of the application.

Heard the learned counsel for the parties.

The learned counsel for the plaintiff submitted his arguments basing on the application and contents of the

affidavit of the authorized representative of the plaintiff. He has pointed out towards the copy of the orders passed in MFA No.4806/2018 by the Hon'ble High Court of Karnataka on 23.11.2024 and copies of Online News articles published on 24.10.2024, 21.10.2024 and other articles as well as copy of the order passed in WP No.22247/2024 dated 19.07.2024, copy of the financial records of defendant No.1 and copy of the CA Certificate.

He has pointed out towards the plaint averments and also defence raised by the defendant No.1. He has pointed out towards the Ex.P3 i.e. Mortgage Deed of the year 2014. He has also drawn my attention towards the recitals of Ex.P3. The defendant No.1 had agreed to pay an interest at the rate of 24% p.a. on the amount borrowed of Rs.5.00 Crores. The defendant No.1 has paid the said amount from 2020 to 2024 February. The defendant No.1 has made baseless allegations. Now the defendant No.1 tried to alienate the schedule property. The claim made by the plaintiff against the defendant No.5 and other defendants is Rs.67,83,63,777/-.

If the property is alienated as per the joint memo filed by the defendant No.1 before the Hon'ble High Court of Karnataka with the proposed purchaser, much hardship will be caused to the plaintiff. The defendant No.1 has also agreed to pay interest at the rate of 24% p.a. It is also clearly mentioned in Ex.P3.

The learned counsel for the defendant No.1 also submitted his arguments and he has pointed out toward the plaint averments and also defence raised on behalf of the defendant No.1. He has also drawn my attention towards the Ex.P3 i.e. the alleged Mortgage Deed. This is not a registered document. No attesting witnesses were there, no signatures are found. The said document cannot be looked into. He has also drawn my attention towards the provisions of Sec.17 of Registration Act and Sec.59(a) of Transfer of Property Act. He has also pointed out towards the provisions of Order 38 Rule 5(2) of CPC as well as Limitation Act. The suit of the plaintiff itself is not maintainable. The plaintiff has not mentioned the value of the property to be attached. The plaintiff has suppressed the material facts. Similar application was filed as IA No.3 and same is pending for consideration. By suppressing the said fact, filed one more application under the similar provisions. The present application is not maintainable.

During his arguments, he has relied upon some decisions reported in MANU/SC/0370/1965, MANU/SC/0014/1957, MANU/SC/8119/2007 and MANU/SC/0225/1989, 2008(2) SCC 302, AIR 1951 Cal 156, AIR 1977 SC 2421, AIR 2014 SCC 339, AIR 1965 SC 1591, ILR 1990 KAR 3518, Civil Appeal No.6144/2024 by the Hon'ble Apex Court.

The defendant No.5 also submitted his arguments basing on the statement of objections filed to the instant application.

After hearing the parties at length, I have perused the pleadings of the parties. The suit is filed for the relief of recovery of the amount with interest at the rate of 24% p.a. The suit is based on the Mortgage Deed of the year 2014 and the same is marked at Ex.P3. The defence of the defendant No.1 is that, already it has paid the Mortgage amount of Rs.5.00 Crores to the plaintiff and ready to pay interest at the rate of 8% p.a. But, the plaintiff is claiming huge amount without any basis. After perusing the Ex.P3, wherein the plaintiff has paid the deficit stamp duty. It shows regarding the rate of interest as 24% p.a. and 12% in other paras, which requires trial.

I have 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. The matter was discussed for amicable settlement also on 20.12.2024. An interim order has been passed and directing the defendant No.1 to deposit 1/5th of the amount claimed in this application. The plaintiff has also sought for an alternative prayer for depositing the suit claim amount. Considering the facts of the case and duration of the Mortgage Deed – Ex.P3, 1/5th amount is ordered to deposit in the court.

Since the amount has not been deposited i.e. 1/5th of the suit claim and which also the amount sought in the instant application. Since the property has been agreed to alienate as per the joint memo filed by the defendant No.1 along with the proposed purchaser before the Hon'ble High Court of Karnataka in the aforesaid WP. Till today, the defendant No.1 has not executed the Sale Deed and not deposited 1/5th of the suit claim as ordered on 20.12.2024. If a direction to the defendant No.1 is given to deposit 1/5th of the suit claim as ordered earlier, after alienation, no harm will be caused to the plaintiff, already the plaintiff has received Rs.5.00 Crores.

Therefore, in the light of discussions made supra, I made the following:

ORDER

The application filed by the plaintiff U/Or.XXXVIII Rule 5 of CPC as IA No.19 is allowed in part.

The defendant No.1 is directed to deposit 1/5th of the suit claim of Rs.67,83,63,777/-, within Two weeks.

For evidence of defendants.

Call on 06.02.2025.

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

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