

KABC170012282021



**IN THE COURT OF LXXXIV ADDL. CITY CIVIL &  
SESSIONS JUDGE, AT BENGALURU (CCH-85)  
(Commercial Court)**

**THIS THE 2<sup>nd</sup> DAY OF JULY 2025**

**PRESENT:**

**SRI. ANAND T. CHAVAN. B.Com.,LL.B.(Spl.)  
LXXXIV ADDL. CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.**

**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  
No.9/12, Lal Bazar Street,  
Merchantile Building,  
Block-E, 2<sup>nd</sup> floor, Kolkata-001.  
Rep. by its Authorized Signatory  
Rohan Agarwal

**(Rep by M/s AKS Law Associates -Advocate)**

**V/s**

**Defendants:-**        **M/s Blue Horizon 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.Srinivas Raju and A.M.Ramaraju  
**and Others**

**(Rep By AK -Advocate)**

**PARTIES TO IA.NO.17**

**Applicant/** M/s Blue Horizon Hotels Pvt. Ltd.  
**Defendant No.1:**

**V/s**

**Opponent/** M/s Gaurav Rose Real Estate Pvt. Ltd.  
**Plaintiff:**

(i)	Provisions under which the application is filed	U/Sec.10 of CPC
(ii)	Relief sought for	For stay of the suit.
(iii)	The date on which the application are filed	01.12.2023
(iv)	Number of the application	1
(v)	The date on which the objections are filed by different opponents	Plaintiff on 05.01.2024
(vi)	The date on which the orders were passed on the said application.	02.07.2025

**ORDER ON IA No.17**

The plaintiff has filed present application under Section 10 of CPC seeking to stay the trial of above

suit, pending disposal of COP No.161 of 2016 filed by plaintiff before Hon'ble High Court of Karnataka.

**2.** It is averred in affidavit of authorized person of defendants no.1, which is filed in support of application that, present suit is filed by plaintiff for recovery of ₹5,00,00,000/- with interest. The plaintiff herein has previously instituted a proceedings in COP No.161/2016, before Hon'ble High Court of Karnataka, Bengaluru. The subject matter of said company proceedings is also with respect to recovery of money of ₹5,00,00,000/-, which is claimed in this suit. The above suit has been filed after proceedings in COP No.161/2016. The issues involved in this suit are directly and substantially in issue in previously instituted COP No.161 of 2016. The defendant No.1 is contesting party in both proceedings. In above suit, Director of plaintiff company has led evidence as PW1 and he has been cross examined. During cross examination of PW1 dated 11.10.2023 at Para 4, he has categorically admitted that they have filed Company Petition No.161 of 2016 before Hon'ble High Court with respect to same claim. Further in para 5, PW1 has admitted that defendant No.1 is making payment in Company Petition No.161/2016 and they

have received ₹2,35,00,000 from defendant No.1 as stated in Para No.19 of his affidavit. It is further admitted by PW1 that after filing his affidavit in lieu of chief examination, they have received ₹45,00,000 and he has agreed that total amount of ₹2,80,00,000 is received by them in Criminal Petition No. 161/2016. Hence there would be conflicting judgments and documents that would be produced during evidence in both proceedings would be almost identical. Hence to avoid conflicting decisions, multiplicity of proceedings and unnecessary wastage of precious judicial time, it is just and proper to stay proceedings of this suit till pending disposal of COP No. 161/2016. These amongst other grounds, it is prayed to allow the application.

**3.** The plaintiff has filed his objections to above application wherein it is averred that, the application is neither maintainable under law nor under facts and it is liable to be dismissed. It is further averred that no grounds are made out by defendant No.1 for staying the trial of present suit pending disposal of COP No.161 of 2016 filed by plaintiff before Hon'ble High Court of Karnataka, Bengaluru. It is further averred that the present suit is filed for specific relief of recovery of ₹5,,00,00,000/- from defendant No.1 and 4 as per

mortgage deed dated 04.04.2014 along with interest at the rate of 24% per annum. Further in present suit relief of declaration is also claimed to declare that Mortgage Deed dtd.28.05.2015 executed by defendant no. 1 in favour of defendant No.2 and 3 is not binding upon plaintiff. It is further prayed to direct defendant No.1 and 4 to sell suit schedule property belonging to them and to pay the sums accrued to plaintiff. Further, defendant No. 1 has reiterated averments of prayer in COP No. 161 of 2016, filed by plaintiff before Hon'ble High Court of Karnataka, wherein it is prayed to pass necessary order for winding up respondent company under Section 433 of Companies Act. It is further prayed in said petition to appoint official liquidator of Hon'ble High Court of Bengaluru or some other fit and proper person as liquidator of all business, asset, properties, income and books of accounts of respondent company with all powers under the provisions of Companies Act. It is further averred that relief claimed in both proceedings are different and it also operate in different realms of the law. Further present suit is for recovery of money, whereas the company petition is filed for winding up, which is statutory remedy. It is further averred that apart from

seeking recoveries of money legitimately owned by them, plaintiff is seeking further relief against various other defendants who are not parties in company petition. Further right to move company petition for winding up is statutory right of a creditor, i.e. plaintiff herein. Hence any order passed on present application would interfere with statutory right of plaintiff in such case. It is further averred that the present application is not maintainable on the basis of statements made by PW1 in his evidence. Further lis in both cases vary and are not directly and substantially in issue as stated in the application. The present application is filed to drag on the above case instead of leading their evidence as per case management. These amongst other grounds it is prayed to reject the application.

4. The following points arise for consideration.

**1. Whether defendant No.1 has made out grounds to stay further proceedings of this case under Section 10 of CPC pending disposal of COP No. 161 by 2016 before Hon'ble High Court of Karnataka?**

**2. What order?**

5. Heard arguments of both sides, perused entire records.

6. The followings are findings to above points.

***Point No.1:- In the Negative.***

***Point No.2:- As per final order  
for the following:***

**REASONS**

**7. Point No.1:-** The plaintiff has initially filed present suit against defendant Nos.1 to 4 seeking relief of recovery of Rs.5 Crores borrowed by defendant No.1 company under Mortgage Deed dtd. 04.04.2014 executed by defendant No.4 along with interest at the rate of 24% pa., and it is further prayed to declare that Mortgage Deed dtd.28.05.2015 executed by defendant No.1 infavour of defendant Nos.2 and 3 as not binding upon plaintiff. It is further prayed that in the event of defendant Nos.1 and 4 failing to repay the above dues, to order for sale of plaint schedule properties belonging to defendant Nos.1 and 4 and to pay the plaintiff out of sale proceeds of such properties. Subsequently defendant Nos.5 and 6 have been impleaded in present suit as per order on IA No.4 dtd.05.03.2022 on specific ground that they being subsequent purchasers of mortgaged property are necessary parties. Now the issues are framed and the matter is posted for evidence. At this stage, defendant No.1 has come up with present application seeking to stay the

proceedings of this case U/Sec.10 of CPC, till disposal of Company Petition No.161/2016 filed by plaintiff himself before Hon'ble High Court of Karnataka. Defendant No.1 has much relied upon aforesaid so called admission of PW1 with regard to filing of above Company Petition for specific relief claimed in it, which is not denied and disputed by otherside. However, it is necessary to refer Sec.10 of CPC, which reads thus,

*"Sec.10:- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.*

*Explanation:- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.*

**8.** Hence, on plain reading of aforesaid provision, it is crystal clear that in order to stay the proceedings of a suit or proceedings, matter in issue of said suit should be directly and substantially in issue in a previously instituted suit between the same parties, or

between parties under whom they or any of them claim litigating under the same title.

**9.** However as already stated above the present suit is filed by plaintiff seeking relief of recovery of Rs.5 Crores borrowed by defendant No.1 company under Mortgage Deed dtd.04.04.2014 with interest at the rate of 24% pa., to declare that Mortgage Deed dtd.28.05.2015 executed by defendant No.1 infavour of defendant Nos.2 and 3 as not binding upon plaintiff and on failure of defendant Nos.1 and 4, to repay the above dues, to recover above dues by sale of plaintiff schedule properties of defendant Nos.1 and 4.

**10.** The counsel for plaintiff has drawn attention of this court to copy of petition in Company Petition No.161/2016 filed by plaintiff before Hon'ble High Court of Karnataka, which is marked as per Ex.P12. On perusal of said document, it clearly shows that the plaintiff has filed said petition only against defendant No.1 with specific relief of winding up of company of defendant No.1 U/Sec.433(e) and 433(f) of Companies Act and to appoint an official liquidator for said purpose. Hence the relief claimed in present suit and above Company Petition are completely different and

mere stray admission of PW1 in cross-examination cannot be ground to believe that the matter in issue in present suit is similar to matter in issue of above Company petition. It is also necessary to consider that relief claimed in both proceedings are not similar. For these reasons, the parties and relief claimed in above proceedings are different and as such absolutely no grounds are made out by defendant No.1 to stay further proceedings of this case, as prayed for in the application. Hence, application deserves to be rejected with costs. Hence, **Point No.1 is answered in the Negative.**

**11. Point No.2:-** For the reasons stated and findings given on point No.1, following is:

**ORDER**

**IA No.17 filed by defendant No.1 is hereby rejected, with costs of Rs.1,000/-.**

**Call on for hearing on IA No.22 and 23 by 11.07.2025.**

[Dictated to the Stenographer Grade-III, directly on the computer, typed by her, then corrected and signed by me and pronounced in the Open Court, dated **this the 2<sup>nd</sup> day of July 2025**]

**(ANAND T. CHAVAN)**  
LXXXIV Addl.City Civil & Sessions Judge,  
Bengaluru.