

KABC170012282021



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

**THIS THE 5<sup>th</sup> DAY OF DECEMBER 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 For D1, BSA- Adv for D2, VGB Adv for D3, PK Adv for D4, MK Adv for D5, MS Adv for D6)**

**PARTIES TO IA.NO.33**

**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/Order XIV Rule 5 R/w Sec.151 of CPC
(ii)	Relief sought for	Alteration of issue No.1.
(iii)	The date on which the application are filed	18.09.2025
(iv)	Number of the application	1
(v)	The date on which the objections are filed by different opponents	By Plaintiff on 14.10.2025
(vi)	The date on which the orders were passed on the said application.	05.12.2025

**ORDER ON IA No.33**

The defendant No.1 has filed present application under Order XIV Rule 5 R/w Sec.151 of CPC praying to alter Issue No.1 as follows:-

***"Whether the plaintiff proves that the A and B Schedule Properties are mortgaged vide Mortgage Deed dtd.04.04.2014 and if so whether such Mortgage Deed is valid?"***

2. It is averred in affidavit of Authorized Representative of defendant No.1 company, which is filed in support of application that there is no pleadings that there is Mortgage by deposit of title deeds and para No.9 of plaint does not speak of any deposit of title deeds. On the contrary in para No.4 of plaint, it is pleaded that the Mortgage Deed is executed. In the Written statement a definite contention is taken that such Mortgage Deed is not valid and same is not registered. Further said validity as well as execution of alleged document is denied in para No.2 of written statement. Hence Issue No.1 does not arise for want of pleading and as such it is prayed to correct said issue as prayed for in the application. These amongst other grounds, it is prayed to allow the application.

**3.** The plaintiff has filed its 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, the application is based on an erroneous understanding of law and misrepresentation of facts. Further issues are framed when a material proposition of fact is affirmed by one party and denied by other. As per application defendant affirms that they have contended the validity of Mortgage Deed in para No.1 of written statement. Thus the application ought to be rejected. It is further averred that motive of defendant No.1 is to elongate the timeline of the suit and as per procedure of Commercial Courts Act, the court needs to enforce strict compliance of timeline to expedite the litigation process. 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 alter Issue No.1, as prayed for in the application?***

***2. What order?***

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

6. The followings are findings to above points.

***Point No.1:- Partly in the Affirmative.***

***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 in favour of defendant Nos.2 and 3 is 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 of defendants Nos.1 and 5.

**8.** At this stage, defendant No.1 has come up with present application seeking to alter aforesaid issue No.1. Issue No.1 is framed by this court is as under:-

***1. Whether the plaintiff proves that, defendant Nos.1 and 4 executed registered Mortgage Deed dtd.04.04.2014 by deposit of title deeds as claimed in para 9 of the plaint?***

**9.** It is pertinent to note that, the aforesaid issue has been framed in pursuant to specific contention of plaintiff in para No.9 of plaint, wherein it is averred that, by execution of aforesaid mortgage, defendant No.1 company and defendant No.4 have subjected the suit schedule land and building to the liability owed presently to the plaintiff and in default by them, as a consequence the aforesaid schedule property shall be subjected to sale to recover the sums due to the plaintiff. Now defendant No.1 in pursuant to specific averments raised in para No.2 of

its written statement seeks to modify aforesaid issue to the effect that whether plaintiff proves that schedule properties are mortgaged as per above Mortgage Deed dtd.04.04.2014 and if so whether such Mortgage Deed is valid. In para No.2 of said written statement defendant No.1 has denied the execution of aforesaid Mortgage Deed and payment of Rs.5 Crores under said deed. Further in Para no.24 of written statement the defendant No.1 itself has taken specific contention that, the aforesaid unregistered Mortgage Deed is opposed to law and it is void. Hence when defendant No.1 takes such specific contention, though initial burden of proving execution of above mortgage deed lies upon plaintiff, the burden to prove that the aforesaid Mortgage Deed is invalid, lies upon defendant. Hence when plaintiff has been already burdened to prove the execution of aforesaid Mortgage Deed as per Issue No.1, a separate Issue needs to be framed casting burden upon defendant No.1 to prove the invalidity of Ex.P3 Mortgage Deed dtd.04.04.2014 and there is no necessity to alter Issue No.1 as prayed for in the application. However in Issue No.1 it shows that, the

Mortgage Deed is mentioned as registered Mortgage Deed whereas Ex.P3 Mortgage Deed is not registered document. Hence the word "registered" from Issue No.1 needs to be deleted and aforesaid additional Issue may be framed with regard to invalidity of said deed. Hence, IA No.33 deserves to be allowed in part. Hence, **Point No.1 is answered Partly in the Affirmative.**

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

**ORDER**

**IA No.33 filed by defendant No.1 under Order XIV Rule 5 R/w Sec.151 of CPC, is hereby allowed in part.**

**Following additional issue is framed.**

**Additional Issue dtd.05.12.2025.**

**1. *Whether defendant No.1 proves that Mortgage Deed dtd.04.04.2004 is invalid, void and opposed to law?***

**Further Issue No.1 is  
corrected by deleting the word  
"registered".**

**No order as to costs.**

[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 5<sup>th</sup> day of December 2025**]

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