

KABC170012282021



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

THIS THE 5th 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, 2nd 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.24

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.33 & 34 of the Karnataka Stamp Act
(ii)	Relief sought for	Praying to impound the Mortgage Deed dtd.04.04.2014.
(iii)	The date on which the application are filed	22.08.2025
(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.24

The defendant No.1 has filed present application under Section 33 and 34 of the Karnataka Stamp Act seeking to impound the Mortgage Deed dtd.04.04.2014 (Ex.P1) (which appears to be Ex.P3) produced by the plaintiff allegedly executed by the defendant No.1 and forward the same to Deputy Commissioner for re-determination of penalty of the deficit duty and withhold the admission of the said document in evidence until compliance.

2. It is averred in affidavit of Director of defendant No.1, which is filed in support of application that, plaintiff has instituted present suit for recovery of money by relying upon an unregistered Mortgage Deed dtd.04.04.2014 said to have been executed by defendant No.1. The said document is an instruments chargeable with stamp duty under provisions of Karnataka Stamp Act 1957, but it is neither duly stamped nor registered as per law. Section 17 of Karnataka Stamp Act mandates that such instruments shall be stamped before or at the time of its execution. The above document has remained unstamped for a period more than two years from

the date of said document and plaintiff has paid deficit stamp duty of Rs.2,57,500/- and equivalent penalty on 08.07.2017, which is just before filing of this suit. Hence delayed payment of stamp duty to facilitate litigation does not cure the illegality committed by plaintiff and such prolonged suppression of duty amounts to intentional evasion, causing loss of legitimate revenue to the state. It is further averred that payment of deficit duty after more than two years cannot render document as duly stamped and under Karnataka Stamp Act the court is bound to impound any such insufficiently stamped instrument. Further Deputy Commissioner is empowered to impose a penalty for ten times of deficit duty and in present case only an equal penalty was imposed without assigning any reason for not levying maximum permissible penalty. Hence the court ought to have impounded the above document under Sec.33 of the Act, notwithstanding payment of deficit stamp duty by plaintiff and under Sec.34 of the Act party can be permitted to rely upon said document only after payment of penalty. Imposing lesser penalty is legally unsustainable and contrary

to binding precedents of Hon'ble High Court of Karnataka. 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. The plaintiff has denied entire averments of application and affidavit filed by defendant No.1. It is further averred that the application does not meet criteria as envisaged under Sec.33 and 34 of Karnataka Stamp Act and it is based on an erroneous understanding of law and misinterpretation of facts. It is further averred that Ex.P3 Mortgage Deed dtd.04.04.2014 is executed by defendant No.1 by admitting their liability towards plaintiff and plaintiff has paid adequate stamp duty of Rs.5,15,000/- to Sub-Registrar Jayanagar on 08.06.2017. It is further averred that the above facts are narrated in plaint and plaintiff has further substantiated it through Ex.P4(a), which is receipt for having paid the stamp duty. It is further averred that defendant No.1 has contended in his written statement that there is no such document which can

be referred as Mortgage Deed and as such in order to address validity of said deed, it requires trial and said document cannot be impounded. Further above document is marked to prove transaction between parties and plaintiff will be put to great jeopardy if said document is impounded. 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 impound the Mortgage Deed dtd.04.04.2014 and forward the same to Deputy Commissioner for re-determination of penalty of deficit duty and withhold admission of said document until such compliance?

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 in favour 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 plaintiff has already led its evidence by examining its Representative by name Rohan Agarwal as PW1 and it has got marked as many as 15 documents as per Ex.P1 to Ex.P15. The said witness has been subject to elaborate cross examination by counsel for DW1 and thereafter evidence of plaintiff was closed. When

matter is posted for defendants' side evidence, defendant No.1 has come up with present application seeking above relief.

8. It is specific contention of defendant no.1 that aforesaid document i.e. Ex.P3 Unregistered Mortgage deed is an instruments chargeable with stamp duty under provisions of Karnataka Stamp Act 1957, but it is neither duly stamped nor registered as per law. The above document has remained unstamped for a period more than two years from the date of said document and plaintiff has paid deficit stamp duty of Rs.2,57,500/- and equivalent penalty on 08.07.2017, which is just before filing of this suit. Hence delayed payment of stamp duty to facilitate litigation does not cure the illegality committed by plaintiff and such prolonged suppression of duty amounts to intentional evasion, causing loss of legitimate revenue to the state.

9. On the other hand counsel for plaintiff has drawn attention of this court to para No.4 of the plaint wherein the plaintiff has pleaded with regard to execution of aforesaid Mortgage Deed by defendant No.1 dtd.04.04.2014 admitting its liability under suit

transaction and also disclosing payment of adequate stamp duty to Deputy Commissioner (Stamps) and District-Registrar, Jayanagar on 08.06.2017 for sum of Rs.5,15,000/- as per document No.3(a) Receipt.

10. Hence it clearly shows that plaintiff has very well pleaded with regard to execution of aforesaid Mortgage Deed and payment of deficit stamp duty and penalty on it by surrendering it before concerned Sub-Registrar. Further Ex.P3 Deed of Mortgage discloses that the concerned Deputy Commissioner of Stamp has made endorsements dtd.08.06.2017 for having received the deficit stamp duty of Rs.2,57,500/- and penalty of Rs.2,57,500/- on said document and said authority has also issued a receipt under Form No.15 for aforesaid total amount of Rs.5,15,000/- as per Ex.P3(a). It is pertinent to note that, while plaintiff has examined PW1 on 24.07.2023 and got marked aforesaid Mortgage Deed dtd.04.04.2014, no objection is raised by defendant for marking said document either on the ground of stamp duty or on the ground of registration and accordingly this court has marked said deed as per Ex.P3.

11. At this juncture, defendant has come up with present application by seriously challenging the order of concerned authority under Stamp Act in receiving aforesaid deficit stamp duty and penalty, but defendant does not dispute the calculation of deficit stamp duty. The only contention of defendant is that, the above penalty was imposed by concerned authority without assigning any reason for not levying maximum permissible penalty and for said reason, the court ought to have impounded the above document under Sec.33 of the Act, notwithstanding payment of deficit stamp duty by plaintiff.

12. However admittedly the aforesaid document is not impounded by the court under Section 33 of Karnataka Stamp Act at the time of admitting it in evidence, since the deficit duty and penalty was already paid by plaintiff on it before competent authority under section 34 and 39 of Karnataka Stamps Act. Hence when the court had no reason to impound such document, there was no reason to call upon plaintiff to pay deficit duty and ten time penalty on said document. Now at this stage defendant

cannot chose to challenge order of concerned Deputy Commissioner of Stamps by challenging quantum of penalty on above document before this court, which is not correct forum to challenge the said order.

13. Further defendant has relied upon following case law:-

**Hon'ble High Court of Karnataka in MANU/
KA/0617/2022 between Private Eye (P) Ltd.,
V/s Hind High Vaccum Co. Pvt. Ltd.,**

"10. REG. POINTS 1 AND 2: As rightly pointed out by the learned Counsel for the petitioner by placing reliance on the Judgment of the Supreme Court in the case of United Bank of India wherein it is held -

"In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just cause. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable."

In view of law laid down by the Apex Court and ratio of the Judgment which is directly applicable to the instant case, the impugned Judgments of the

Trial Court are liable to be set aside on this ground alone. Further it is significant to note that the Trial Court has not framed appropriate issues regarding the limitation for filing the suits. In my considered view, the Trial Court was not justified in dismissing the suits without framing appropriate issues.”

**Case law reported in (2024) 7 SCR 316
between G.M Shahul Hameed V/s Jayanthi R.
Hegde (Hon’ble Supreme Court)**

“14. The presiding officer of a court being authorised in law to receive an instrument in evidence, is bound to give effect to the mandate of sections 33 and 34 and retains the authority to impound an instrument even in the absence of any objection from any party to the proceedings. Such an absence of any objection would not clothe the presiding officer of the court with power to mechanically admit a document that is tendered for admission in evidence. The same limitation would apply even in case of an objection regarding admissibility of an instrument, owing to its insufficient stamping, being raised before a court of law. Irrespective of whether objection is raised or not, the question of admissibility has to be decided according to law. The presiding officer of a court when confronted with the question of admitting an instrument chargeable with duty but which is either not stamped or is insufficiently stamped ought to judicially determine it. Application of judicial mind is a sine qua non having regard to the express language of sections 33 and 34 and interpretation of pari materia provisions in the Indian Stamp Act, 1899 11 by this Court.

However, once a decision on the objection is rendered – be it right or wrong – section 35 would kick in to bar any question being raised as to admissibility of the instrument on the ground that it is not duly stamped at any stage of the proceedings and the party aggrieved by alleged improper admission has to work out its remedy as provided by section 58 of the 1957 Act.”

18. On the face of such an order, it does not leave any scope for doubt that on the date the GPA was admitted in evidence and marked as an exhibit, the Trial Court did not deliberate on its admissibility, much less applied its judicial mind, resulting in an absence of judicial determination. In the absence of a ‘decision’ on the question of admissibility or, in other words, the Trial Court not having ‘decided’ whether the GPA was sufficiently stamped, section 35 of the 1957 Act cannot be called in aid by the respondent. For section 35 to come into operation, the instrument must have been “admitted in evidence” upon a judicial determination. The words “judicial determination” have to be read into section 35. Once there is such a determination, whether the determination is right or wrong cannot be examined except in the manner ordained by section 35. However, in a case of “no judicial determination”, section 35 is not attracted.”

21. Allowing an instrument with insufficient stamp duty to pass unchallenged, merely due to technicalities, would undermine the legislative intent and the fiscal interests of the state. The courts ought to ensure that compliance with all substantive and procedural requirements of a statute akin to the 1957 Act are adhered to by the interested parties. This duty of the court is paramount, and any deviation would set a detrimental precedent, eroding the integrity of the legal system. Thus, the court must vigilantly prevent

any circumvention of these legal obligations, ensuring due compliance and strict adherence for upholding the rule of law.”

14. The ratios laid down in above caselaws are well founded. However as already stated above, in present case, there was no question of deficit stamp duty at the time of admissibility of Ex.P3 Mortgage deed, since deficit stamp duty and penalty was already paid before competent authority and absolutely there was no reason for the Court to exercise power under section 33 and 34 of Karnataka stamp Act to call upon plaintiff to pay further duty or penalty. Hence defendant cannot take shelter under ratios laid down in above caselaws for the relief claimed in the application. For these reasons absolutely there are no grounds to impound the Ex. P3 Mortgage Deed dtd.04.04.2014 at this stage and forward the same to Deputy Commissioner for re-determination of penalty of deficit duty and also withhold admission of said document until such compliance. Hence the present application is misconceived, devoid of merits and it is liable to be rejected with cost for delay caused to the

proceedings. Accordingly, **Point No.1 is answered in the Negative.**

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

ORDER

**IA No.24 filed by defendant
No.1 under Section 33 and 34 of the
Karnataka Stamp Act is hereby
rejected with cost of Rs.1000/-.**

[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 5th day of December 2025**]

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