

KABC170012282021



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

**THIS THE 25<sup>th</sup> DAY OF FEBRUARY 2026**

**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.40**

**Applicant/  
Plaintiff:**

M/s Gaurav Rose Real Estate Pvt. Ltd.

**V/s**

**Opponents/  
Defendants:**

Blue Horizon Hotels Pvt Ltd., & Others.

(i)	Provisions under which the application is filed	U/Sec.45 & 73 of the Evidence Act, 1872 R/w Or.XXVI Rule 10A & Sec.151 of CPC
(ii)	Relief sought for	Seeking to appoint handwriting expert.
(iii)	The date on which the application are filed	10.02.2026
(iv)	Number of the application	1
(v)	The date on which the objections are filed by different opponents	By Defendant No.1 on 16.02.2026
(vi)	The date on which the orders were passed on the said application.	25.02.2026

**ORDER ON IA NO.40**

The plaintiff has filed present application under Section 45 and 73 of the Evidence Act, 1872 R/w Order XXVI Rule 10A & Section 151 of CPC seeking to appoint Handwriting Expert for the purpose of comparing the disputed and admitted signatures of the Director of defendant No.1.

**2.** It is averred in the affidavit of the Authorized Representative of plaintiff company filed in support of the application that, the document titled as mortgage deed marked as Ex.P5 contains the signature of one Mr. A.C Srinivasaraju and defendant No.1 disputes said signature. The said A.C Srinivasaraju has verified written statement of defendant No.1 and has affixed his signature on vakalathnama to engage legal services. The admitted signatures and disputed signatures of said person are available on record of this court and it appears necessary to take expert opinion to help this court to arrive at the truth and ensure just and proper adjudication of issues involved in present suit. Further plaintiff would be put to irreparable harm and injury, if application is not allowed. Per contra no harm or injury would be caused to defendants if same is allowed. These

amongst other grounds, it is prayed to allow the application.

**3.** The defendant No.1 has filed objections to above application, wherein its averred that, the application is wholly misconceived, not maintainable either in law or on facts and liable to be dismissed in limine. It is further averred that the application does not clearly specify which signature is admitted and which is disputed. It is vaguely stated that mortgage deed marked as Ex.P5 contains signature of A.C Srinivasaraju and defendant No.1 has disputed the same. It is further averred that Ex.P5 is not mortgage deed and no signatures of said A.C Srinivarasaraju are found on said document. It is further averred that present suit is a simple suit for recovery of money and entire foundation of the suit is based upon Ex.P3 Mortgage Deed, which is undated, unsigned, unattested and unregistered document. Hence the said document is inadmissible and incapable of being proved as per Sec.17 of Registration Act and Sec.59 of Transfer of Property Act. further the said mortgage deed is created and fabricated for the purpose of filing present suit and it

has no sanctity in the eyes of law. Further plaintiff has admitted that defendant No.4 is owner of schedule property and above mortgage deed does not show that he is signatory or party to said document. Hence said deed is invalid as it purports to create a rights in respect of property not belonging to defendant No.1. It is further averred that, Hon'ble High Court of Karnataka in WP No.26232/2025 has directed this court to dispose of the suit within four months from 01.12.2025. Substantial portion of said period has already elapsed and the application is filed with clear intention to delay the proceedings. Further arguments of counsel for plaintiff and defendants are concluded on merits and when case was posted for reply arguments, plaintiff have come up with present application. Hence application is afterthought and filed with an intention to fill up lacuna after realizing the weakness exposed during the course of arguments. Further expert opinion cannot be permitted at belated stage. Further defendant No.1 has narrated several reasons as to why Ex.P3 cannot be looked into and cannot be relied upon. These amongst other grounds, it is prayed to reject the application.

4. The following points arise for consideration;

**1. Whether plaintiff has made out grounds for appointing Handwriting Expert for the purpose of comparing disputed and admitted signatures of Director of defendant No.1, as prayed for in the application?**

**2. What order?**

5. Heard arguments of both sides, perused records.

6. My answer in the above points are as under:

**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 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 plaintiff 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 evidence of both parties is concluded and arguments of both sides are heard on merits. When the case is posted for reply arguments of plaintiffs side, plaintiff has come up with present application seeking to appoint Court commissioner on specific ground that, defendant No.1 has disputed the signature of aforesaid AC Srinivasaraju and for said purpose the appointment of expert is necessary for proper adjudication of the matter.

**8.** At the outset it is necessary to mention that, though plaintiffs have wrongly mentioned the Mortgage Deed as IA No.5 in their affidavit, they have filed memo dtd.16.02.2026 to consider the same as IA No.26. In support of present application counsel for plaintiff has relied upon following case laws.

**(1979) 2 SCC 158 between State (Delhi Administration) V/s Pali Ram. (Hon'ble Supreme Court)**

**"30.** The matter can be viewed from another angle, also. **Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence solely on comparison made by himself. It is, therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.**

**31.** It is not the province of the expert to act as Judge or Jury. As rightly pointed out in Titli v. Jones(1) the real function of the expert is to put before the Court all the materials, together with reasons which induce him to come to the conclusion, so that the Court, although not an expert may form its own judgment by its own observation of those materials. Ordinarily, it is not proper for the Court to ask the expert to give his finding upon any of the issues, whether of law or fact, because, strictly speaking, such issues are for the Court or jury to determine. The handwriting expert's function is to opine after a scientific comparison of the disputed writing with the proved or admitted writing with regard to the points of similarity and dissimilarity in the two sets of writings. The Court should then compare the handwritings with

its own eyes for a proper assessment of the value of the total evidence.

**32.** In this connection, the observations made by Hidayatullah, J. (as he then was) in *Fakhruddin v. State of Madhya Pradesh* (ibid) are apposite and may be extracted:

"Both under Sections 45 and 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case, the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become a handwriting expert but to verify the premises of the expert in one case and to appraise the value of the opinion in the other case. The comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in a large measure in the disputed writing. In this way, the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness."

**33.** Since even where proof of handwriting which is in nature comparison, exists, a duty is cast on the Court to use its own eyes and mind to compare, the

admitted writing with the disputed one to verify and reach its own conclusion, it will not be wrong to say that when a Court seized of a case, directs an accused person present before it to write down a sample writing, such direction in the ultimate analysis, "is for the purpose of enabling the Court to compare" the writing so written with the writing alleged to have been written by such person, within the contemplation of Section 73. That is to say, the words 'for the purpose of enabling the Court to compare' do not exclude the use of such "admitted" or sample writing for comparison with the alleged writing of the accused, by a handwriting expert cited as a witness by any of the parties. **Even where no such expert witness is cited or examined by either party, the Court may, if it thinks necessary for the ends of justice, on its own motion, call an expert witness, allow him to compare the sample writing with the alleged writing and thus give his expert assistance to enable the Court to compare the two writings and arrive at a proper conclusion.**

**(2008) 4 SCC 530 between Thiruvengadam Pillai V/s Navaneethammal & Another. (Hon'ble Supreme Court)**

"15. Section 45 of the Indian Evidence Act, 1872 relates to 'opinion of experts'. It provides inter alia that when the court has to form an opinion as to identity of handwriting or finger impressions, the opinion upon that point of persons specially skilled in questions as to identity or handwriting or finger impressions are relevant facts. Section 73 provides that in order to ascertain whether a finger impression is that of the person by whom it purports to have been made, any finger impression admitted to have been made by that

person, may be compared with the one which is to be proved. These provisions have been the subject matter of several decisions of this Court.

"**15.2.** In *Murari Lal v. State of Madhya Pradesh - 1980 (1) SCC 704*, this Court indicated the circumstances in which the Court may itself compare disputed and admitted writings, thus :

"The argument that the court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and the voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the court to compare the writings and come to its own conclusions. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the court. Where there is none, the court will have to seek guidance from some authoritative textbook and the court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence."

**2023 SCC Online Ori 2293 between Basi Bewa and Others V/s Raimani Majhiani (Hon'ble High Court of Orissa at Cuttack)**

"8. Section 73 of the Indian Evidence Act empowers the court to compare writings with specimen or admitted documents. The phrase 'admitted or proved to the satisfaction of the court' used in section 73 contemplates that the specimen document taken for comparison of writing or signature in the purported document must be undisputed one and all parties to the dispute must admit the specimen signature or writing in the base document. In case one party refuses to admit, or disputes the specimen document, it is incumbent on the court to first satisfy that the signature or writing on the specimen document is proved to be of the concerned person and only then proceed for comparison with the purported document. Nonetheless, prudence demands that the judge should be slow in venturing an opinion based on comparison of signatures made by him."

9. The ratio laid down in above case is well founded and same cannot be disputed. However appointment of an expert for assisting the Court on a disputed documents, depends upon facts and circumstances of each and every case. In instant case, admittedly the contesting defendants have filed their written statement long back and they have disputed the validity of Ex.P3 Mortgage deed since initial stage. Moreover, defendants have addressed their elaborate arguments on main suit including on the issue of

admissibility and authenticity of said document and at this stage the plaintiff has come up with present application to refer Ex.P3 Mortgage Deed for expert opinion at the fag end of proceedings. As rightly argued by defendants side, plaintiff cannot be permitted to fill up the lacuna of the case after hearing the arguments of other side on merits. If the application is allowed, it will unnecessarily prolong the matter. Moreover the grounds urged by plaintiff seeking expert opinion with regard to disputed signatures of aforesaid A.C Srinivasaraju are not convincing and same does not help the court at this stage in any manner for the adjudication of the case. Moreover matter is nearly 8 years old and plaintiff has not denied and disputed the direction issued by Hon'ble High Court of Karnataka in WP No.4668/2025 directing both parties to cooperate for speedy disposal of the suit and this Court has been directed to dispose of the case within period of 04 months from the date of receipt of said order. If the above applications is allowed, it will definitely prolong the matter for indefinite period. Hence grounds urged by plaintiff for referring aforesaid admitted and

disputed signature of Director of defendant No.1 company are insufficient and as such the above application deserve to be rejected with costs. Accordingly, **Point No.1 is answered in the Negative.**

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

**ORDER**

**IA No.40 filed by plaintiff under Section 45 and 73 of the Evidence Act, 1872 R/w Order XXVI Rule 10A & Section 151 of CPC, is hereby rejected with cost of Rs.1,000/-.**

[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 25<sup>th</sup> day of February 2026**]

**(ANAND T. CHAVAN)**

LXXXIV Addl.City Civil & Sessions Judge,  
Bengaluru.