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Aged about 61 years,
R/at 11th Km off. Kanakapura Road
Doddakallasandra
J.P.Nagar, 9th Phase
Bangalore - 560 062.

***(By Prudentia Law Chambers LLP,
Advocates for D1 & D2)***

// versus //

**Opponents/
Plaintiff/
Defendant
No.3 & 4**

SOBHA PROJECTS AND TRADE PRIVATE
LIMITED
A company registered under Companies
Act, 1956
No.23/1, Sonnenahalli village,
Brooke field, Mahadevapura post,
Bangalore - 560 048.
Rep by its General Manager - Accounts,
Mr. Aravinda Hegde.

3. PRIDE AND EXPERT PROPERTIES PVT
LTD
Pride Hulkul, 901, 9th Floor, No.116
Lalbagh Road
Bangalore - 560 027.

4. TANVI ASSET HOLDINGS LLP
R/at 11th Km off. Kanakapura Road
Doddakallasandra
J.P.Nagar, 9th Phase
Bangalore - 560 062.

***(By Sri. K.S. Harish, Advocate)
(By Sri. G. Sridhar, Advocate for D3)
(By Sri. Vaibav M. Iyengar, Advocate
for D4)***

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(i)	Provision under which the application is filed and	Rule 6 of Video Conference Rules, 2020.
(ii)	relief sought	Filed by Defendant No. 1 and 2 to permit their GPA holder to depose through VC.
(iii)	The date on which the application is filed	01-03-2025
(iv)	Number of the application	IA No. 9
(v)	The date on which the objections are filed by different opponents	Objections by Plaintiff filed on 17-03-2025 Objections by Defendant No. 4 filed on 26-03-2025
(vi)	The date on which the orders were passed on the said application	04-04-2025

ORDERS ON I.A. NO. 9.

This is an application filed by defendant No. 1 and 2 under Rule 6 of the Video Conference Rules, 2020 for recording the evidence of GPA holder of D1 and 2 through VC.

2. The main suit is at the stage of defendants' evidence and in the defendants' evidence the witness of defendant No. 3 is examined as DW2 and designated partner of defendant No. 4 is examined as DW3 and chief examination of DW2 and DW 3 is concluded and the matter is for their cross-examination.

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3. The plaintiff and defendant No. 4 have filed detailed objections to the present application.

4. I have heard both sides and perused the records of the case.

5. The only point that arises for my consideration is :-

Whether I.A. No. 9 deserves to be allowed and the GPA holder of defendant No. 1 and 2 should be permitted to examine himself through VC?

6. My answer to the above point is in the **affirmative** for the following :-

REASONS

7. The facts in brief are that, this is a suit filed by the plaintiff against defendant No. 1 to 4 for recovery of sum of Rs. 95,26,000 from the defendants jointly and severally along with interest.

8. All the defendants have entered appearance and filed detailed written statements. Plaintiff's evidence is concluded and as already noted supra, in the defendants' evidence the witnesses on behalf of defendant No. 3 and 4

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are examined as DW2 and DW3 and the matter is for their cross-examination.

9. On earlier occasion, orders dated 25.01.2025, the evidence of Defendant No. 1 and 2 was taken as nil since they did not adduce evidence in spite of grant of sufficient opportunity. Thereafter, defendant No. 1 and 2 filed I.A. No. 5 and 6 to recall the said orders and to give opportunity to them to adduce evidence which applications were allowed by orders dated 18.02.2025. At this stage, defendant No. 1 and 2 have filed the present application seeking leave to examine their GPA holder as witness on their behalf through VC on the ground that the said GPA holder / proposed witness is abroad.

10. On an earlier occasion, application for the same purpose was filed in I.A. No. 8, which was rejected by orders dated 18.02.2025 only on the ground that it is supported only by a memorandum of facts and not supported by affidavit of the proposed witness, since it is for the proposed witness to state on oath the reasons for permitting him to adduce evidence through VC and such facts cannot be stated by the learned advocate by filing memorandum of

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facts. However, while rejecting I.A. No. 8, liberty was given to file appropriate application supported by affidavit, and in pursuance of the same, the present application is filed.

11. The present application is supported by affidavit of the GPA holder of Defendant No. 1 and 2 / proposed witness, but the said affidavit is a scanned copy, and the email is produced showing that the affidavit has been sworn to by the proposed witness before the notary public in Ontario, Canada and has been sent by email and the physical copy has been dispatched but not yet arrived.

12. In the said affidavit, the GPA of D1 and 2 / proposed witness has stated that he is residing abroad due to personal exigencies and unable to come to India physically to attend the court and hence seeking leave to depose through VC.

13. In the objections filed by the plaintiff, it is essentially contended that the present application is filed to protract the proceedings and to cause delay. It is further contended that no proof is furnished in support of the averments of the affidavit that proposed witness is residing abroad due to medical reasons. It is contended that under the VC rules

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provision is there only for the party and not for attorney holder to appear through VC. It is contended that the very purpose of executing GPA would be defeated if the GPA holder is permitted to appear through VC and instead it is for defendant No. 1 to himself appear through VC or he can appoint any other person who is physically able to appear. It is also sought to be contended that the proposed witness has filed a partition suit in OS 1048 of 2020 and therefore, it is sought to be contended that allowing the application will impede fair trial.

14. In the objections filed by defendant No. 4, it is contended that there is violation of Rule 6.2 of the rules and hence the application is defective and liable to be rejected. It is further contended that no proper reasons are stated as to why the witness cannot travel to India and therefore, application is liable to be rejected. It is also contended that due to difference in timing, it will create undue trouble to schedule VC. It is pointed out that there are other persons who can very well depose, such as the wife and daughter of D2 who are also the coparceners of defendant No. 1 family. And therefore, there is no reason why it is only the

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proposed witness who has to be examined particularly when he is unable to physically attend the court. It is also highlighted that allowing the application will delay the trial. It is contended that the remote place is not specified and there is only a vague statement that remote point will be in Toronto, Canada. Ultimately, it is contended that if permission is given to proposed witness to appear through VC, there is a chance of the proposed witness attempting to defraud the parties during cross-examination which will impede fair trial. It is highlighted that right to effectively cross-examine a witness in court is fundamental aspect of fair trial and cannot be compromised.

15. Having considered the rival contentions, at the outset the twin contentions taken in above objections that there is violation of Rule 6.2 and that the provision for appearing through VC is only applicable to parties and not to GPA holder need to be considered. Rule 6 of the Video Conference Rules, 2020 deals with filing application, making a request for video conference. **Under Rule 6.1, either a party or witness can make request for VC.** Therefore, straight away the contention of Plaintiff that the facility to

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appear through VC is only available to the party and not to GPA holder cannot be accepted because in this case the GPA holder is the proposed witness and Rule 6.1 specifically contemplates that application for VC can be made by witness.

16. Rule 6.2 provides that proposal to move request for VC should first be discussed with the other parties to the proceedings except where it is not possible or inappropriate as in the case of urgent applications.

17. It is relying upon this provision that it was contended that since this is not an urgent application, the application filed without first discussing the proposal for VC with other parties to the suit is not maintainable. However, it is to be noted that, under Rule 6.3, the court is given the power to pass an appropriate order on request / application, after hearing all the parties concerned, and after ascertaining that application is not filed with intention to impede fair trial or to delay the proceedings. Therefore, it is clear that under Rule 6.3, power is vested with the court to pass appropriate order after hearing all the concerned parties and therefore, merely on the ground of failure to discuss the proposal for

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VC with the other parties, is not a ground to reject the application seeking permission to appear through VC. When the rule specifically provides that any order on such an application has to be passed only after hearing all the concerned parties, it follows that even if the proposal to move request for VC is not first discussed with the other parties, no prejudice will be caused to the other parties because they can put forth their contentions at the time of hearing of the application. **Therefore, the present application cannot be rejected only on the ground of non-compliance of requirement of Rule 6.2 of the VC Rules.**

18. It is to be noted that, in so far as the sufficiency of reasons for requesting appearance through VC, along with memo dated 26-3-2025, Counsel for D1 and 2 has filed copy of permanent resident card of the proposed witness which shows that he is a permanent resident of Canada. At paragraph 2 of the affidavit, the proposed witness has stated that he is unable to appear physically due to personal exigencies. At the time of argument, counsel for D1 and 2 submitted that, due to certain health reasons, the

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proposed witness is unable to travel to India. No doubt, no medical records are produced in respect of the health reasons cited at the bar.

19. However, the very purpose of framing of the VC Rules is to enable witnesses who cannot easily come before the court physically to appear in court through VC by making use of the latest technologies.

Therefore, even if it is accepted that there is no material on record to show that due to health reasons the proposed witness is unable to travel to India, the fact remains that the proposed witness is admittedly residing in a foreign country, that is, Canada, and therefore cannot easily appear physically in court, and it is precisely to meet such a contingency that the VC Rules have been framed. Refusal to exercise discretion to permit appearance through VC only on the ground that the witness can travel physically from Canada to India for the purpose of this case would be a travesty of justice and defeat the very purpose of framing of the VC Rules.

20. Contention taken in the objections that, if GPA holder is residing abroad it is for defendant No. 2 to himself appear

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and depose either physically or through VC or to appoint some other GPA holder to depose cannot be accepted. It is to be noted that, in law, there is no obligation upon any party to physically step into the witness box in support of his or her case. The only requirement of the law is as provided under **Order 18 Rule 3A CPC** that where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined. Therefore, the law gives liberty to defendant No. 2 [Defendant No. 1 is HUF] not to examine himself but instead to examine any other witness on his behalf. When the law gives such a liberty to D2, it is not open to the other side to contend that the defendant No. 2 should himself come to the witness box instead of examining a GPA holder. Of course, the law is clear that a GPA holder can only depose in respect of facts within his personal knowledge. In the affidavit in support of the present application, the proposed witness has stated that he has got personal knowledge of the facts of the case (para 3). Such being the case, it is not possible to reject the present application on the ground that defendant No. 2 can himself appear before the court

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physically / through VC, instead of examining his GPA holder as witness.

21. The contention that the defendant No. 1 and 2 can appoint any other GPA holder who is presently in India is also to be stated to be rejected because, as already noted, it is only a person with personal knowledge of the facts of the case who can depose on behalf of D1 and 2. And therefore, it does not lie in the mouth of the opposite party to contend that defendant No. 1 and 2 should appoint some other GPA holder.

22. Ultimately, when it is shown that the proposed witness is residing abroad and hence cannot easily appear physically in court, the court should permit such a witness to appear through VC by taking advantage of the latest technology and in view of the framing of the VC Rules, except where the court is of the opinion that the application is filed with the intention to impede fair trial or delay proceedings.

23. The contention that the application is filed to delay proceedings cannot be accepted because the defendants' side of evidence is not yet concluded, and as already noted

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supra, the matter is still at the stage of cross-examination of DW2 and DW3, the witnesses of defendant No. 3 and 4 respectively. The contentions regarding difference in time zone may lead to difficulties for scheduling VC is only to be stated to be rejected because obviously the VC can be scheduled only during the court hours of this court and it is for the witness and remote point coordinator to duly adjust to the time zone of their respective country. Therefore, the difference in time may create some difficulty for the remote point coordinator and the witness but will not create any difficulty to the opposite side since VC can only be during the court hours.

24. The contention that the remote point is not specified and is only stated as Toronto, Canada is not a ground for rejecting the application since it is for the court to fix the remote point and remote point coordinator and the applicant can only propose the same.

25. Ultimately, it is to be noted that **in the objections it is nowhere contended that the facts of the case are such that cross-examination physically in court is necessary to bring out the truth.** Instead, the only

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contention in this regard is raised at paragraph 13 of the objections of defendant No. 4, by contending that the witness may attempt to defraud the parties during cross-examination, by citing reasons such as lack of internet access or health issues or certain other challenges. However, at this stage there is no reason to believe that the witness may impede the deposition in any such manner. **And it is made clear that, in case the witness does not cooperate during the VC, the liberty to appear through VC can be withdrawn at any stage by the court.**

26. The contention that the right to effective cross-examination is a fundamental right of fair trial is trite, but when the VC Rules have been framed which facilitate cross-examination through VC, the contention that by recording evidence through VC, the right to effective cross-examination is curtailed cannot be accepted. However, I hasten to add that in the course of the VC, if it is forthcoming that the witness is not cooperating for effective cross-examination, certainly the court can always step in at any stage and withdraw the liberty to appear through VC.

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27. For all the above reasons, I hold that present application deserves to be allowed and the proposed witness, that is, GPA holder of defendant No. 1 and 2 should be permitted to depose through VC. However, it is made clear that since the permission to appear through VC is being given at the instance of D1 and 2, **all the costs of VC shall be borne by D1 and D2** and no financial burden in so far as the VC is concerned can be imposed either on the plaintiff or defendant No. 3 and 4. Accordingly, answering the point for consideration in the **affirmative**, I proceed to pass the following :-

ORDER.

IA No. 9 under Rule 6 of the Video Conference Rules, 2020 is allowed.

It is held that permission is given to GPA holder of defendant No. 1 and 2 namely Mr. Charan Grandige Raja to depose through VC, which means that his chief examination, cross-examination and re-examination shall be through video conference.

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Under the VC Rules at Rule 5.3.1. where the witness / required person is overseas, an official of Indian Consulate / Indian Embassy / High Commission of India, has to be appointed as remote point coordinator. It is made clear that it is the responsibility of the defendant No. 1 and 2 / proposed witness to make arrangement for getting official of Indian Consulate / Indian Embassy / High Commission of India to act as remote point coordinator.

It is further made clear that it is also the responsibility of Defendant No. 1 and 2 / proposed witness to arrange for a suitable remote point in Toronto, Canada, making it clear that it should be a sufficiently independent place, i.e. it should not be residence / office or in any other manner connected with the witness or with defendant No. 1 and 2.

It is further held that, all the financial costs for making the above arrangements for the VC

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shall be borne by defendant No. 1 and 2 and no financial burden shall be placed either on the plaintiff or defendant No. 3 and 4.

It is further clarified that at any stage during the VC, if it is found that the witness is not cooperating, or the right of the other parties to cross-examine the witness is being unfairly impeded, then in such a case, the permission to depose through VC shall be immediately withdrawn.

Ordered accordingly.

[Dictated using MacWhisper Pro 10.8.1, transcript revised, corrected, signed and then pronounced by me in open court on this the **04th day of April, 2025**]

(S. Sudindranath)
LXXXIII ADDL.CITY CIVIL AND SESSIONS JUDGE,
COMMERCIAL COURT, BENGALURU