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**IN THE COURT OF LXXXIII ADDL. CITY CIVIL & SESSIONS JUDGE,
COMMERCIAL COURT, BENGALURU (CCH-84)**

**Present: Sri S. Sudindranath, LL.M., M.B.L.,
LXXXIII ADDL. CITY CIVIL & SESSIONS JUDGE
BENGALURU.**

COM.O.S.No.1298 / 2022

Dated on this 08th day of September 2025

Plaintiff/s **M/s. Sobha Projects & Trade Pvt.
Ltd.**

(By Sri. K.S. Harish, Advocate)

// versus //

Defendant/s **Mr. G.R. Nataraj H.U.F. & others**

*(D1 & D2 by Prudentia Law
Chambers LLP, Advocates)
(D3 by Sri. G. Sridhar, Advocate)
(D4 by Sri. Vaibav M. Iyengar,
Advocate)*

I.A.No.10 to 15

**Applicants/
Defendants 1 & 2** **1. MR. G R NATARAJ H U F**
11th Km. Off. Kanakapura Road,
Doddakallasandra, J.P. Nagar,
9th Phase, Bangalore - 560 062.
Rep by its Karta Mr. G.R Nataraj.

2. MR. NATARAJ G R
Father name not known

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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 //

**Opponent/s
Plaintiff/s**

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.

(By Sri. K.S. Harish, Advocate)

ORDERS ON IA NO. 10 TO 15.

All these IAs are filed by defendant No. 1 and 2 and essentially these IAs are filed to give opportunity to defendant No. 1 and 2 to adduce evidence and to give opportunity to defendant No. 1 and 2 to cross-examine DW 2 and DW 3.

2. The plaintiff and defendant No. 3 and 4 have filed detailed objections to these applications.

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3. The stage of the main suit is for arguments of Defendant No. 1 and 2 (the other parties have already addressed final arguments).
4. I have heard the arguments of both sides on these applications and perused the records of the case.
5. The only point that arises for my consideration is :-

Whether IA No. 10 to 15 deserve to be allowed and the order closing evidence of defendant No. 1 and 2 should be recalled to give opportunity to defendant No. 1 and 2 to adduce evidence and whether DW 2 and DW 3 should be recalled for cross-examination by defendant No. 1 and 2?

6. My answer to the above point is **as per finding** for the following:-

REASONS.

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7. The facts in brief are that, it is the case of the plaintiff that defendants had collectively engaged the services of the plaintiff for supply and installation of plumbing and sanitary work under work order dated 22-2-2014 and in accordance with the said work order plaintiff has delivered the material and completed installation and the defendants have to pay a balance amount of Rs. 63,81,565 along with interest component of Rs. 31,44,463 and for recovery of total sum of Rs. 95,26,028 the present suit is filed.

8. The present suit is being contested by the defendant No. 1 to 4. The stand of defendant No. 1 and 2 is that in fact plaintiff has not completed the work within the time stipulated and therefore defendant No. 1 and 2 are entitled to impose penalty upon the plaintiff in terms of the work order. The defendant No. 3 and 4 contend that they have only acted as agents of defendant No. 1 and 2 and hence it is essentially the liability of defendant No. 1 and 2 to pay the suit claim.

9. The plaintiff has adduced evidence and has been cross-examined by all the defendants. In the rebuttal

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evidence initially the witness of defendant No. 3 was examined as DW1 but subsequently it was stated that he cannot appear before the court and hence a fresh witness of defendant No. 3 is examined as DW2 and witness of defendant No. 4 is examined as DW3. The evidence of defendant No. 1 and 2 was initially closed on 25-1-2025. Thereafter defendant No. 1 and 2 filed IA No. 5 and 6 to reopen the evidence which was allowed. Thereafter defendant No. 1 and 2 filed IA No. 8 to record the evidence of GPA holder of defendant No. 1 and 2 through VC which was also allowed and since it was stated that GPA holder of defendant No. 1 and 2 is abroad staying in Canada the Consulate General of India at Toronto and the office of the Consulate General were appointed as remote point coordinator and remote point respectively. However, when the matter was fixed for recording the evidence of GPA holder of defendant No. 1 and 2 on 4-6-2025 since the original affidavit evidence was not filed into court it was not possible to record the chief examination of said witness and therefore chief examination was deferred. Thereafter there was continuously no representation by counsel on record of

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defendant No. 1 and 2 and therefore on 21-7-2025 evidence of defendant No. 1 and 2 was taken as nil. Thereafter on 29-7-2025 NOC Vakalath was filed for defendant No. 1 and 2 and by that time the matter had reached the stage of arguments. The plaintiff and defendant No. 3 and 4 addressed arguments and ultimately when the matter was posted for arguments of defendant No. 1 and 2 as a last chance on 23-8-2025 the present applications are filed.

10. In the memorandum of facts in support of the present applications it is stated by the counsel on record for D1 and 2 that she received the Vakalath belatedly and immediately filed the same on 29-7-2025 and thereafter she had applied for certified copies and after obtaining the certified copies the present application is filed.

11. In the objections filed by the plaintiff and defendant No. 3 and 4 firstly it is contended that the applications having not been supported by the affidavit of the party are liable to be rejected only on that ground. Secondly, it is contended that the applications are filed only with a view to protract the proceedings, since repeatedly evidence of

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defendant No. 1 and 2 has been closed, and repeatedly applications have been filed for reopening of the same. Insofar as the prayer for recalling DW 2 and 3 for cross-examination is concerned, it is contended that there is no conflict of interest between the co-defendants, and therefore cross-examination should not be permitted.

12. Having considered the rival contentions, insofar as the contention that the applications are not supported by the Memorandum of Facts is concerned, it is to be noted that under Rule 18 (2) of the Karnataka Civil Rules of Practice, although applications should be supported by affidavit of party, Memorandum of Facts of the counsel on record will suffice, where facts on which the application is based appear from the records of the case or relate to any act or conduct of the advocate. In the case on hand, the reason stated in support of the applications is that the NOC Vakalat was received after delay, and immediately after receiving the same, the counsel has filed NOC Vakalat on 29-7-2025, and therefore, it is clear that these facts stated in the Memorandum of Facts accompanying the applications are based on either the records of the case or the personal

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knowledge of the counsel on record, and therefore, under Rule 18 of the Karnataka Civil Rules of Practice, in respect of these facts, it is sufficient for the counsel to file a Memorandum of Facts, and it is not necessary to file the affidavit of the party, and therefore, the first objection is unacceptable.

13. Insofar as the second objection that the defendant No. 1 and 2 are trying to protract the proceedings is concerned, the same can be met by imposing exemplary costs on defendant No. 1 and 2 as a precondition for reopening their evidence.

14. Insofar as the third contention is concerned, there is no doubt that a co-defendant can cross-examine another co-defendant only if there is a conflict of interest between the co-defendants. In this regard, counsel for defendant No. 4 has rightly relied upon the ruling of Hon'ble High Court of Karnataka in ***Ennen Castings Pvt. Ltd. v. M.M. Sundaresh reported in A.I.R. 2003 Karnataka 293.*** However, in the case on hand, there is in fact a conflict of interest between defendant No. 1 and 2 on one hand and

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defendant No. 3 and 4 on the other hand because it is the stand of defendant No. 3 and 4 that they are not liable to pay the suit claim and even if it is held that the plaintiff is entitled to the suit claim, it is only defendant No. 1 and 2 who are the principal employers who are liable. Such being the case, certainly an opportunity has to be given to defendant No. 1 and 2 to cross-examine the witness of defendant No. 3 and 4, namely DW 2 and DW 3.

15. Now, insofar as the cost to be imposed as precondition for reopening evidence of defendant No. 1 and 2 and recalling DW 2 and 3 for cross-examination is concerned, a few relevant facts may be taken into account. The matter was posted for defendant's evidence for the first time on 26.11.2024. Since then, the matter has been delayed for one reason or the other, for which it is defendant No. 1 and 2 who are principally responsible because initially they did not adduce evidence and initially their evidence was closed for the first time on 25.01.2025 and thereafter they filed application to reopen evidence but wanted to lead evidence through VC on the ground that GPA holder of defendant No. 1 and 2 is abroad in Canada and on the date fixed for

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recording the chief examination of said witness through VC by appointing the Consulate General at Toronto as the remote point coordinator, the original affidavit evidence was not ready as a result of which the chief examination had to be deferred and thereafter there was no representation for defendant No. 1 and 2 at all till NOC Vakalat was filed on 29.07.2025. Therefore, the defendant No. 1 and 2 having protracted the matter from 26.11.2024 up to 29.07.2025 certainly have to be mulcted with exemplary costs which is quantified at Rs.5000 each payable to the plaintiff and defendant No. 3 and 4. This is because defendant No. 1 and 2 are seeking reopening of their evidence which will affect the plaintiff and also seeking recall of DW 2 and 3 which will affect the defendant No. 3 and 4. Accordingly, I proceed to pass the following :-

ORDER.

IA No. 10 to 15 are allowed subject to defendant No. 1 and 2 paying cost of Rs.5000 each to the plaintiff, defendant No. 3 and defendant No. 4.

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Subject to payment of above cost, the evidence of defendant No. 1 and 2 is reopened and DW 2 and DW 3 are recalled for cross-examination by defendant No. 1 and 2.

Further, it is clarified that, since the main contesting party namely plaintiff has already cross-examined DW2 and DW3, after cross-examination by the co-defendant namely defendant No. 1 and 2, if the plaintiff so desires, plaintiff will be given opportunity of further cross-examination of DW2 and DW3. This is to ensure that any admissions elicited from DW 2 and DW 3 by plaintiff are not nullified in the cross examination by Defendant No. 1 and 2.

[Dictated using MacWhisper Pro 10.8.1, transcript revised, corrected, signed and then pronounced by me in open court on this the **08th day of September, 2025**]

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