

KABC170104862020



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

THIS THE 4th 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.3972/2012

Plaintiff:-

**Ms. Radhika Nandivada @
Radhika Murthy,
W/o Dr. P.S Murthy,
Aged about 44 years,
R/at J04, J Block, Ground Floor,
Diamond District Apartments,
Kodihalli, Old Airport Road,
Bangalore-560 008.**

(Rep by M/s.NDS LAW PARTNERS -Advocate)

V/s

Defendants:-

**1. Mr. George Thangiah,
(Since deceased)
S/o Late Mr. Mark Thangiah,
Aged about 80 years,
R/at No.6, Commissariat Road,
Bangalore-560 025.**

Rep by his LRs
 1(a) Mrs. Chitra Poornima,
 W/o Late Mr. George Thangiah,
 Aged Major,
 R/at No.6, Commissariat Road,
 Bangalore-560 025.

AND OTHERS.

(Rep By Dua Associates -Advocate)

PARTIES TO IA.Nos.10 to 14

Applicant/ Ms. Radhika Nandivada @
Plaintiff: Radhika Murthy,
V/s

Opponent/ Mr. George Thangiah & Ors.,
Defendant:

(i)	Provisions under which the application is filed	IA No.10- U/Sec.151 of CPC IA No.11- U/Sec.151 of CPC IA No.12- U/Or.XVIII Rule 17 R/w Sec.151 of CPC IA No.13- U/Or.VII Rule 14 R/ w Sec.151 of CPC. IA No.14-U/Or.XVI Rule 1(2) of CPC
(ii)	Relief sought for	IA No.10- Seeking to recall order dtd.29.09.2024. IA No.11- Seeking to recall order dtd.29.09.2024. IA No.12- Seeking to recall PW1 for further cross examination. IA No.13- Seeking to produce documents. IA No.14- Seeking to summon the person.

(iii)	The date on which the application are filed	31.07.2025 & 15.12.2025
(iv)	Number of the application	4
(v)	The date on which the objections are filed by different opponents	Common Objection By Defendant on 14.08.2025, Objections by Defendant 14.08.2025 & 06.01.2026
(vi)	The date on which the orders were passed on the said application.	04.02.2026

ORDER ON IA Nos.10 to 14

The plaintiff has filed IA No.10 U/Sec.151 of CPC seeking to recall the order dated September 29, 2024 and thereby to reopen the stage for plaintiff's further evidence.

The plaintiff has filed IA No.11- U/Sec.151 of CPC seeking to reopen the stage for plaintiff's further evidence by recalling the order dated September 29, 2024 whereby the said stage was closed and the matter was posted for the stage of defendant's evidence.

The plaintiff has filed IA No.12- U/Or.XVIII Rule 17 R/w. Sec.151 of CPC seeking to recall PW1 for the purpose of leading further examination in chief on behalf of the plaintiff.

The plaintiff has filed IA No.13- U/Or.VII Rule 14 R/w Sec.151 of CPC seeking to produce and rely upon following additional documents, as part of her evidence.

1. Certified copy of the plaintiff's plaint in OS NO.1511/2014 filed before the Ld. City Civil & Sessions Judge, Bengaluru.
2. Certified copy of written statement filed by Nitesh Estates Limited OS NO.1511/2014 filed before the Ld. City Civil & Sessions Judge, Bengaluru.
3. Certified copy of the plaintiff's Amended Plaint in Com.OS No.815/2025 filed before the Ld. Commercial Court, Bengaluru; and
4. Certified copy of the Nitesh Estates' (now Satchmo Holdings Ltd.,) additional Written Statement in Com. OS No.815/2025 filed before the Ld. Commercial Court, Bengaluru.

Further plaintiff has filed IA No.14 under Order XVI Rule 1(2) CPC seeking to issuance of summons to following witness and permit plaintiff to examine him as an additional witness.

Details of witness:-

Mr. S. Jagannath,
S/o R. Subramaniam,
Aged about 56 years,
Having office at Satchmo Holdings
Limited (Formerly Nitesh Estates Ltd.,)
No.110, Level I, Andrews Building,
M.G Road, Bengaluru-560001.

2. The gist of affidavits of counsel for plaintiff, filed in support of above applications is that, the plaintiffs has filed the above suit seeking recovery of amount due to her from the defendant towards fees for the services rendered by her as a real estate agent of the defendant in respect of the joint development (JD) transaction of his property (defined in the plaint as "JD Property"). It is further averred that, as a Real Estate Agent, she offered to facilitate requisite introductions between the defendant and several developers, for the purposes of facilitating a JD transaction from JD property and the defendant availed services to procure requisite introductions with developers for the purpose of the JD transaction. It is further averred that the plaintiff duly rendered requisite services to defendant and to the developer in the JD transaction. The defendant and the developer were fully aware that plaintiff was acting as the common Real Estate Agent for both parties in respect of JD transaction. Despite having availed plaintiff's service as a Real Estate Agent and also remitting advance part payment of the brokerage fee in the sum of Rs.50,00,000/-, the

developer subsequently denied payment of plaintiff lawful balance brokerage fee by alleging that plaintiff had allegedly not acted as the developer's Real Estate Agent and plaintiff had allegedly misrepresented to the developer that she was the duly appointed Real Estate Agent of the defendant. Therefore the plaintiff filed suit in OS No.1511/2014 against Nitesh Indiranagar Retail Pvt. Ltd., and Nitesh Estates Limited seeking recovery of balance brokerage fee owed to plaintiff. It is further averred that, vide its order dtd.10.02.2025 the court was pleased to transfer the said OS No.1511/2014 to the files of Ld. Commercial Court, Bengaluru where the said suit was renumbered as Com.OS No.815/2025. Thereafter the plaintiff filed an interlocutory application for amendment of the plaint so as to bring the plaint in alignment with the requirements of the Commercial Courts Act, 2015 and basis order dtd.18.06.2025, a further application was filed to amend the cause title to incorporate the current names of the defendants. The said application was allowed vide its order dtd.18.06.2025 and 02.07.2025. The plaintiff has also filed amended

plaint dtd.10.07.2025. The defendant No.2 in the said suit has also filed additional written statement dtd.10.07.2025. In the additional written statement filed by defendant No.2 in Com.OS No.815 of 2025 certain contentions have been taken by it, which are relevant for the consideration of the lis by this court in the suit, as the defendants in Com.OS No.815/2025 were also parties to the JD transaction which is subject matter of the present suit. To elaborate, in the written statement that was originally filed by Nitesh Estates Ltd., in OS No.1511/2014, Nitesh Estates Limited had alleged that plaintiff had allegedly misrepresented to it that plaintiff had due authority from the defendant herein to act as his Real Estate Agent for the JD transaction. However, in its additional written statement filed on July 10, 2025, Nitesh Estates Limited has now categorically admitted that plaintiff had at all points of time during the JD transaction, acted as the Real estate agent of the defendant and she was representing the defendant's interests during the course of discussions and negotiations that eventually culminated in the execution of

Memorandum of Understanding and Joint Development Agreement in the JD transactions. Evidently the above statements made by Nitesh Estates Limited in the additional written statement filed by it in Com.OS No.815/2025 are of utmost importance and relevance for the purpose of adjudicating the disputes forming subject matter of the instant suit, as they would dispel and disprove the false defence set up by the defendant in the instant case. Therefore, it is important that the said additional written statement be produced and placed before this court for its kind consideration. Further, for the sake of completeness and for providing necessary context to the statements made by Nitesh Estates Limited in its additional written statement dated July 10, 2025 filed in Com.OS No.815/2025, it would also be necessary for plaintiff to produce and place before this court the original plaint and original written statement is OS No.1511/2014, as also the amended plaint filed by plaintiff in Com.OS No.815/2025. It is further averred that the additional Written Statement has been filed by Nitesh Estates Limited in Com.O.S. No.815/2025 only on July 10,

2025. However, since the stage for plaintiff's further evidence has already been closed by this Hon'ble Court vide its Order dated September 29, 2024, the plaintiff has been advised by her Counsel that plaintiff will be required to seek necessary Orders from this Court to recall the said Order dated September 29, 2024, reopen the stage for her further evidence, recall her as a witness and permit her to produce and mark the additional Written Statement filed by Nitesh Estates Limited in Com.O.S. No.815/2025, as also the other pleadings. It is further averred that, in view of the above sequence of events, the pleadings and amended pleadings that now form part of the records in Com.O.S. No.815 of 2025 could not be produced or marked by plaintiff in the instant suit, at an earlier point of time. Consequently, by filing the accompanying application at this juncture, seeking leave of this Court to recall the Order dated September 29, 2024, to reopen the stage for further evidence to recall plaintiff for marking aforesaid documents of Commercial O.S. No.815 of 2025, as additional evidence. It is further averred that, the

documents are evidently crucial evidence for ascertaining the true facts pertaining to the subject lis.

3. It is further averred in affidavit of IA No.14 that, the above Written Statement is signed by one Mr. S. Jagannathan, S/o. Mr. R. Subramaniam, who is said to be the Senior General Manager - Legal of Nitesh Estates (now Satchmo Holdings Ltd.). The said Mr. S. Jagannathan has also attested to the contents of the Written Statement, on oath, by virtue of his Statement of Truth accompanying the said Written Statement. Given the aforesaid contents of the said Written Statement and their relevance to the facts of the instant case, especially in light of the critical statements made therein in relation to the Plaintiff's involvement on behalf of the Defendant herein, in the joint development transaction that is the subject matter of the captioned suit, it is important for the complete and effective adjudication of the subject disputes that the said Mr. S. Jagannathan be brought before this court as an additional witness. It is further averred that, the additional Written Statement has been filed by Nitesh Estates Limited in

Com.O.S. No.815/2025 only on July 10, 2025 and further evidence of plaintiff had already been closed vide its Order dated September 29, 2024. Hence plaintiff could not file present application earlier, plaintiff could not file the accompanying application during the stage of further evidence. Accordingly, plaintiff has been advised by her Counsel to file the accompanying application at this stage so that this court may pass necessary orders for summoning the said Mr. S. Jagannathan as an additional witness to depose on the aforesaid contents of the Written Statement filed by him on behalf of Nitesh Estates Limited. The details of Mr. S. Jagannathan could not be provided as part of List of Witnesses prior to commencement of trial, or even during the stage of plaintiff evidence, due to the bonafide reasons aforementioned. Further plaintiff undertakes to incur the necessary expenses of the proposed witness for his appearance and participation in the captioned matter, as per the directions of this Court. These amongst other grounds, plaintiff has prayed for allowing the above applications.

4. The defendant has filed common objections to IA No.10 to 12 applications, wherein it is averred that, the applications are not maintainable and same deserve to be dismissed. All the averments in affidavits accompanying the applications are denied and it is specifically contended by defendants that, plaintiff never acted as a broker or real estate agent on behalf of the defendant. It is further averred that, the said contentions have been raised by NIRPL and NEL who are not a party to the instant suit and are strangers to the instant suit. Therefore, their contentions would not amount to any admission by the Defendant herein as alleged in the affidavit accompanying the Applications under reply. The Plaintiff cannot rely upon the written statement in another suit filed by a third party to the present suit, as the said NIRPL and NEL are strangers to the instant suit. The Evidence Act, 1872 does not recognize the contentions of a third party in another suit as an admission as against the Defendant herein. Therefore, the said written statement cannot be relied upon as evidence in this suit. It is pertinent to note that the said third-party NIRPL & NEL are not

being examined by the Plaintiff as a witness in the present case. Therefore, no reliance can be placed on the said written statement of the third party to this suit.

5. It is further averred that, the question of allowing production of a document which cannot be relied upon as evidence in the instant suit, does not arise. As such, since the Applications under reply are being filed for the limited purpose of marking the documents sought to be produced along with IA No.11, and IA No.11 not being maintainable, would warrant the dismissal of the instant Applications under reply as well. Further, plaintiff has already produced voluminous documents before this Hon'ble Court and are merely now seeking to recall PW-1 and produce additional documents to derail and protract the proceedings. Further, it is submitted that the Plaintiff has not made out any grounds seeking for recall or reopening the stage of examination-in-chief of PW-1.

6. In addition to above contention, it is specifically averred in objections to IA No.13 that, the application is not maintainable in law or on facts and

plaintiff is seeking to produce pleadings in Com OS No.815/2025 pending on the file of the Commercial Court, Bengaluru, including the additional written statement dated 10.07.2025 filed by Nitesh Estates Indiranagar Retail Private Limited (NIRPL) and Nitesh Estates Limited (NEL). The defendants have reiterated contention that plaintiff is not their agent and NIRPL and NEL who are not a party to the instant suit are strangers to the instant suit. Hence it is specifically contended by defendant that, no reliance can be placed on the said written statement of the third party to this suit and as such, the question of allowing production of a document which cannot be relied upon as evidence in the instant suit, does not arise.

7. The said written statement cannot be relied upon as evidence in as much as the said pleadings are of a different case and the party whose pleadings are sought to be relied upon by the Plaintiff is not a party nor a witness in the instant case. Therefore, the Defendant would have no opportunity of cross-examining the said party making statements/pleadings. Under such circumstances, the Plaintiff

cannot be permitted to mark the documents sought to be produced in as much as they have no evidentiary value being marked through the Plaintiff herein. Further, the said documents would also not have any evidentiary value as they are also not in conformity with Section 33 of the Indian Evidence Act, 1872.

8. It is further averred that, the Plaint in Com OS 815/2025 sought to be produced by the Plaintiff has already been marked as Ex.D4 by this court during the course of cross-examination of PW-1. The Plaint has been marked as it is a Plaint filed the Plaintiff, therefore as an admission as against the Plaintiff in this case. This would fall completely in a different category from the written statement of a third party. Therefore, the question of producing the other documents/pleadings does not arise. It is further averred that, the application is filed to derail and protract the proceedings.

9. In addition to above objections, it is further averred in objections to IA No.14 that, whatever statements made by the said Nitesh Estates Limited in a suit filed by the Plaintiff herein against it cannot

be considered as an admission with regard to the present case as the said Nitesh Estates Limited would obviously take up various contentions in its own interest and defence, as it is not a neutral third party. Therefore, the statement made by the said Nitesh Estates Limited in a case in which it is defending and the Defendant herein not being a party to the said case, cannot be considered as admission or evidence with respect to the instant suit. Further, the statements of a party cannot be considered as admission against a co-party much less a party who is not even a party to the said suit.

10. Moreover, even as per the Plaintiff, contradictory pleas have been taken up by the said Nitesh Estates Limited, and therefore, there is no evidentiary value to the said statements. In any event, the said statements in any form are to be discarded as self-serving to the said Nitesh Estates Limited and cannot be used against the Defendant in this case. While filing this application and IA No.10-13. the Plaintiff is also guilty of suppression of material facts and pleadings in Com OS No.815/2025. Therefore, as the evidence of the intended witness has no value in law,

the question of summoning such a witness will not arise.

11. It is further averred that, that this feeble attempt to use the statements of the said Nitesh Estates Limited in another proceedings as evidence in the instant case further demonstrates the fact that the Plaintiff is quite cognizant that she has completely failed to establish any case against the Defendant despite completion of trial in the instant case.

12. It is further averred that the Plaintiff had not filed any list of witnesses at the appropriate stage in the instant proceedings. Subsequently, the Plaintiff on 24.08.2023 filed an application under Order XVI Rule 1(a) read with Section 151 of the CPC, after the stage of Plaintiff evidence was closed, seeking permission to file list of witnesses and examine an additional witness by the name of N.A Afzal. The said application came to be allowed vide Order dated 17.11.2023. Thereafter, the Plaintiff examined the said person as PW-2 and subsequently, Plaintiff side evidence was closed. Thereafter. Defendant No.1(a) led evidence as DW-1. The Plaintiff, at this juncture,

has filed Applications seeking to re-examine herself by producing additional documents (IA No.10 to 13, which are pending) and during pendency of such Applications, has once again filed another under Order XVI Rule 1(a) to examine another additional plaintiff witness, nearly after 14 years of institution of the instant suit. Plaintiff is seeking to examine a representative of M/s. Nitesh Estates Limited, who is a counter-party to this Defendant in a Joint Development Transaction, which ultimately led to disputes, resulting in an Award dated 25.04.2018. Under such circumstances, it is clear that the Plaintiff taking advantage of the sour relationship between the Defendant and said entity, is colluding and seeking to lead evidence of the said entity to her advantage in the instant suit.

13. The following points arise for consideration.

1. Whether plaintiff has made out grounds to reopen the stage for plaintiff's further evidence by recalling the order dated September 29, 2024, as prayed for in IA Nos.10 & 11?

2. Whether plaintiff has made out grounds to recall PW1 for the purpose

of leading further examination in chief, as prayed for in IA No.12?

3. Whether plaintiff has made out grounds to permit production of additional documents, as prayed for in IA No.13?

4. Whether plaintiff has made out grounds for issuance of summons to witness proposed in IA No.14 and to permit plaintiff to examine said witness?

5. What order?

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

15. The followings are findings to above points.

Point No.1 to 4:- In the Negative.

Point No.5:- As per final order for the following:

REASONS

16. Point Nos.1 to 4:- These points are taken up together for consideration in order to avoid repetition of facts. The plaintiff has filed present suit against defendant seeking to declare that there existed an oral contract between herself and defendant in respect of Realty Services sought to be procured by the defendant from her in relation to joint

development transaction of aforesaid Joint Development Property, where defendant agreed to pay commission of 2% of the cumulative value that accrues to the share of defendant, out of successful joint development transaction and that plaintiff rendered Realty services to defendant under such oral contract. It is further prayed to grant consequential relief to direct to pay sum of Rs.6,26,50,000/- for aforesaid Realty Services rendered by plaintiff under oral contract together with service tax of 10.3% and interest at the rate of 12% per annum on principal amount of Rs.5 Crores from 07.03.2011 till filing of the suit. It is further prayed to award future interest on said amount and to pay additional prevalent service tax as on the date of defendant making the above payment. It is specific case of plaintiff that, defendant appointed her a Real Estate agent to secure developer for aforesaid JD property and after her prolonged efforts, she secured a developer by name Nitesh Estate Pvt. Ltd. (NEPL) It is further averred that defendant and aforesaid NEPL recognized plaintiff as their duly appointed and authorized real estate agent and they

agreed to pay her 2% commission on total cumulative value of Rs.500 Crores in relation to joint development of above property and subsequently Memorandum of Understanding dtd.19.10.2007 and other consequential documents were executed between them. Upon settlement of financial disputes existed between both parties, in respect of JD property, plaintiff promptly issued invoice dtd.07.03.2011 to defendant seeking payment of Rs.5,51,50,000/- inclusive of service tax at the rate of 10.3% towards aforesaid commission, but same was returned by defendant by declining to recognize her as their real estate agent. The plaintiff issued legal notice dtd.09.04.2011 calling upon defendant to pay said amount and on failure of defendant to pay the said amount, she was constrained to file present suit. The records of the case defect that original defendant has files his written statement through his SP Holder denying the entire case of plaintiff and his liability to pay aforesaid commission. Thereafter the matter has been posted for evidence after framing of issues and both parties have already led their

substantial evidence by marking voluminous documents in support of their contentions.

17. It is pertinent to mention that though initially the case was filed before City Civil Court, that is before CCH-28 in the year 2012, the same is initially transferred to CCH-83 court (Commercial Court) as per notification No.ADM-I(A)/411/2020 of City Civil Court. Thereafter the case has been transferred to this court vide another notification No.ADM-I(A) 812/2021 dtd.22.12.2021 for disposal. Thereafter when case was pending before this court as per order dtd.03.04.2021 the matter was again placed before Hon'ble Prl. City Civil Court for reallocation of the matter and the case is again transferred to Learned XIV Addl. City Civil & Sessions Court under notification No.CCC(P1)837/21. Thereafter when the case has reached the stage of further evidence of defendants side, it is again transferred to this court for adjudication on merits. However it shows that, the present IA No.10 to 12 are filed by plaintiff before erstwhile court itself on 31.07.2025.

18. On perusal of entire records, it shows that, the matter is pending since more than 14 years and the

plaintiff has sufficiently led her evidence by marking huge number of documents. It is further pertinent to note that, the plaintiff has got examined another witness in support of her case as PW2 by filing additional witness list and said witness has been again recalled and examined for the 2nd time. Thereafter defendant has also led their evidence by examining their representative and they have also got marked several documents in support of their defence.

19. Now at this fag end of the proceedings, after lapse of 14 years, the plaintiff has come up with present application on sole ground that, in Com.OS No.815 of 2025 certain contentions have been taken by it, which are relevant for the consideration of the lis by this court in the suit, as the defendants in Com.OS No.815/2025 were also parties to the JD transaction which is subject matter of the present suit. It is further contended by plaintiff that, in OS No.1511/2014, Nitesh Estates Ltd., in its additional written statement filed on July 10, 2025, Nitesh Estates Limited has now categorically admitted that plaintiff had at all points of time during the JD

transaction, acted as the Real estate agent of the defendant and she was representing the defendant's interests during the course of discussions and negotiations that eventually culminated in the execution of Memorandum of Understanding and Joint Development Agreement in the JD transactions. On these grounds, plaintiff seeks to produce above documents and also to summon above witness in support of her case. It is further contention of plaintiff that the witness proposed in I.A.No.14, has also attested to the contents of the Written Statement in relation to the Plaintiff's involvement on behalf of the Defendant herein, in the joint development transaction that is the subject matter of the captioned suit and as such examination of said witness is necessary. However as rightly argued by counsel for defendant, contention of aforesaid third party would not amount to any admission by the Defendant and Plaintiff cannot rely upon the written statement in another suit filed by a third party to the present suit.

20. Further Plaintiff, at this juncture, has filed Applications seeking to re-examine herself by

producing additional documents (IA No.10 to 13, which are pending) and during pendency of said Applications, has filed another application under IA No.14 Order XVI Rule 1(a) to examine another additional witness, nearly after 14 years of institution of the instant suit. Admittedly the dispute between parties is commercial in nature and after prolong trial, now the case has been posted for further evidence of defendant side. At this stage, plaintiff cannot chose to reopen entire case either for her examination with leave to produce additional documents or for examination of above third party witness, against the scope and timeline mandated under Commercial Court Act.

21. If the above applications are allowed, it will literally amount to reopening of the entire trial of the case and it will again prolong the trial of the case for indefinite time. For these reasons the application of plaintiff is not maintainable both on merits and on ground of inordinate delay. Hence I.A.s No.10 to 14 filed by plaintiff deserve to be rejected. Accordingly **Point Nos.1 to 4 are answered in the Negative.**

22. Point No.5:- For the reasons stated and findings given on point Nos.1 to 4, following is:

ORDER

IA Nos.10 to 14 filed by plaintiff are hereby rejected.

No order as to costs.

Call on for further evidence of defendant side if any as last chance by 12.02.2026.

[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 4th day of February 2026**]

(ANAND T. CHAVAN)

LXXXIV Addl.City Civil & Sessions Judge,
Bengaluru.